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# IDAHO CODE

CONTAINING THE

## GENERAL LAWS OF IDAHO ANNOTATED

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ORIGINALLY PUBLISHED BY AUTHORITY OF  
LAWS 1947, CHAPTER 224

REPUBLISHED BY AUTHORITY OF  
LAWS 1949, CHAPTER 167 AS AMENDED

Compiled Under the Supervision of the  
Idaho Code Commission

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4223611

ISBN 0-327-13625-1

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## PUBLISHER'S NOTE

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Since the publication in 1990 of Replacement Volume 5-Part 2 many laws have been amended or repealed and many new laws have been enacted. In particular the laws concerning banks and banking have been changed and laws regarding loan brokers, financial institution acquisition and business and industrial corporations have been enacted. The resulting increase in the size of the cumulative supplement for Volume 5-Part 2 has made it necessary to revise this volume. Accordingly, Replacement Volume 5-Part 2 is issued with the approval and under the direction of the Idaho Code Commission.

To better serve our customers, by making our annotations more current, LEXIS Publishing has changed the sources that are read to create annotations for this publication. Rather than waiting for cases to appear in printed reporters, court decisions are now being read as they are released by the courts. A consequence of this more current reading of cases, as they are posted on *lexis.com*, is that the most recent cases annotated may not yet have print reporter citations. These will be provided, as they become available, through later publications.

This publication contains annotations taken from decisions of the Idaho Supreme Court and the Court of Appeals, and the appropriate federal courts, posted on *lexis.com* as of March 14, 2000. These cases will be printed in the following reports:

Pacific Reporter, 2nd Series  
Federal Supplement, 2nd Series  
Federal Reporter, 3rd Series  
United States Supreme Court Reports, Lawyers' Edition, 2nd Series

Additionally, annotations have been taken from the following sources:

American Law Reports, 5th Series, through Volume 75  
American Law Reports, Federal Series, through Volume 158  
Opinions of Attorney General, 1992-2

Following is an explanation of the abbreviations of the Court Rules used throughout the Idaho Code.

I.R.C.P.	Idaho Rules of Civil Procedure
I.R.E.	Idaho Rules of Evidence
I.C.R.	Idaho Criminal Rules
M.C.R.	Misdemeanor Criminal Rules
I.I.R.	Idaho Infraction Rules
I.J.R.	Idaho Juvenile Rules
I.C.A.R.	Idaho Court Administrative Rules
I.A.R.	Idaho Appellate Rules

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## **USER'S GUIDE**

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In order to assist both the legal profession and the layman in obtaining the maximum benefit from the Idaho Code, a User's Guide has been included herein. This guide contains comments and information on the many features found within the Idaho Code intended to increase the usefulness of this set of laws to the user. See Volume 1 of this set for the complete User's Guide.





## ADJOURNMENT DATES OF SESSIONS OF LEGISLATURE

Article 3, § 22 of the Idaho State Constitution provides: "No act shall take effect until sixty days from the end of the session at which the same shall have been passed, except in case of emergency, which emergency shall be declared in the preamble or in the body of the law."

Section 67-510 Idaho Code provides: "No act shall take effect until July 1 of the year of the regular session or sixty (60) days from the end of the session at which the same shall have been passed, whichever date occurs last, except in case of emergency, which emergency shall be declared in the preamble or body of the law."

"Every joint resolution, unless a different time is prescribed therein, takes effect from its passage."

This table is given in order that the effective date of acts, not carrying an emergency or which do not specify an effective date, may be determined with a minimum of delay.

Year	Adjournment Date
1921 .....	March 5, 1921
1923 .....	March 9, 1923
1925 .....	March 5, 1925
1927 .....	March 3, 1927
1929 .....	March 7, 1929
1931 .....	March 5, 1931
1931 (E. S.) .....	March 13, 1931
1933 .....	March 1, 1933
1933 (E. S.) .....	June 22, 1933
1935 .....	March 8, 1935
1935 (1st E. S.) .....	March 20, 1935
1935 (2nd E. S.) .....	July 10, 1935
1936 (3rd E. S.) .....	July 31, 1936
1937 .....	March 6, 1937
1937 (E. S.) .....	November 30, 1938
1939 .....	March 2, 1939
1941 .....	March 8, 1941
1943 .....	February 28, 1943
1944 (1st E. S.) .....	March 1, 1944
1944 (2nd E. S.) .....	March 4, 1944
1945 .....	March 9, 1945
1946 (1st E. S.) .....	March 7, 1946
1946 (2nd E. S.) .....	March 7, 1946
1947 .....	March 7, 1947
1949 .....	March 4, 1949
1950 (E. S.) .....	February 25, 1950
1951 .....	March 12, 1951

1952 (1st E. S.)	January 16, 1952
1953	March 6, 1953
1955	March 5, 1955
1957	March 16, 1957
1959	March 9, 1959
1961	March 2, 1961
1961 (1st E. S.)	August 4, 1961
1963	March 19, 1963
1964 (E. S.)	August 1, 1964
1965	March 18, 1965
1965 (1st E. S.)	March 25, 1965
1966 (2nd E. S.)	March 5, 1966
1966 (3rd E. S.)	March 17, 1966
1967	March 31, 1967
1967 (1st E. S.)	June 23, 1967
1968 (2nd E. S.)	February 9, 1968
1969	March 27, 1969
1970	March 7, 1970
1971	March 19, 1971
1971 (E. S.)	April 8, 1971
1972	March 25, 1972
1973	March 13, 1973
1974	March 30, 1974
1975	March 22, 1975
1976	March 19, 1976
1977	March 21, 1977
1978	March 18, 1978
1979	March 26, 1979
1980	March 31, 1980
1981	March 27, 1981
1981 (E. S.)	July 21, 1981
1982	March 24, 1982
1983	April 14, 1983
1983 (E. S.)	May 11, 1983
1984	March 31, 1984
1985	March 13, 1985
1986	March 28, 1986
1987	April 1, 1987
1988	March 31, 1988
1989	March 29, 1989
1990	March 30, 1990
1991	March 30, 1991
1992	April 3, 1992
1992 (E. S.)	July 28, 1992
1993	March 27, 1993
1994	April 1, 1994
1995	March 17, 1995
1996	March 15, 1996

1997 .....	March 19, 1997
1998 .....	March 23, 1998
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### CHAPTER 1

### CONTROL OF SHEEP DISEASES

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## 25-101 — 25-125. Creation of board — Rules and regulations — Inspection and treatment of diseased sheep — Quarantines. [Repealed.]

**Compiler's notes.** These sections which comprised S.L. 1919, ch. 35, §§ 18-26, p. 127; 1919, ch. 144, § 3, p. 439; C.S., §§ 1856, 1860-1868; am. 1921, ch. 15, §§ 17-26, p. 14;

1921, ch. 15, §§ 1-15, p. 14; I.C.A., §§ 24-101 — 24-125, were repealed by S.L. 1950 (1st E.S.), ch. 50, § 26, p. 61, and S.L. 1951, ch. 250, § 27, p. 527.

**25-126. Creation of board.** — A state board of sheep commissioners is hereby created within the department of agriculture, but its officers and employees shall not be subject to the administrative control of the director of the department of agriculture. The administrative officers and employees of the board shall be nonclassified employees. The board may contract with the director of the department of agriculture for administrative and/or veterinary services. [1951, ch. 250, § 1, p. 527; am. 1974, ch. 18, § 97, p. 364; am. 1985, ch. 63, § 1, p. 125.]

**Compiler's notes.** Section 96 of S.L. 1974, ch. 18 is compiled as § 22-4011.

**25-127. Members — Appointment, qualifications, salary — Oath.** — The state board of sheep commissioners, hereinafter called the board, shall consist of five (5) members, all of whom shall be experienced wool growers and no two (2) of whom shall be from the same county; said



members shall be appointed by the governor and hold their offices for the term for which they are appointed and thereafter until their successors are duly appointed and qualified.

As vacancies occur upon the board, the Idaho Wool Growers Association shall submit to the governor the names of two (2) persons qualified and suitable for appointment for each such vacancy from whom the governor shall make his appointment to fill such vacancies. The first commissioners shall be appointed for the following terms: two (2) commissioners shall be appointed to hold office until the first Monday of January 1952; two (2) commissioners shall be appointed to hold office until the first Monday of January 1954; one (1) commissioner shall be appointed to hold office until the first Monday of January 1956; and at the expiration of said dates for the commissioners first appointed and until the expiration of terms thereafter, commissioners shall be appointed to fill such vacancies for a term of six (6) years; and in case of any vacancy occurring in the office of commissioner at any time other commissioners shall be appointed, who in each instance shall hold office until the unexpired term of the commissioner whom he is appointed to succeed. Each of said commissioners, before entering upon the duties of his office, shall take and subscribe to the oath of office required by section 59-401, Idaho Code. The members of the board may be compensated as provided by section 59-509(d), Idaho Code. Said compensation may be paid from the sheep commission account in the same manner as other expenses are paid. Each member of said board shall be a qualified elector of the county from which he is chosen and must reside during his term of office within the state of Idaho. Said board must hold a meeting annually and at any other time if so requested by any member of the board. [1951, ch. 250, § 2, p. 527; am. 1971, ch. 136, § 12, p. 522; am. 1980, ch. 247, § 21, p. 582; am. 1985, ch. 63, § 2, p. 125; am. 1997, ch. 116, § 1, p. 289; am. 1998, ch. 205, § 1, p. 726.]

**Compiler's notes.** The amendment to this section by S.L. 1998, ch. 205, § 1, became effective September 23, 1998, upon referendum approval of the provisions of the act by wool growers. For further details about this referendum, see the text of § 25-160.

**Cross ref.** Oath of office, § 59-401 et seq. Standard Travel Pay and Allowance Act, §§ 67-2007, 67-2008.

**Sec. to sec. ref.** This chapter is referred to in § 67-5303.

**25-128. Powers and duties of state board of sheep commissioners.** — The board shall have the authority to perform all those duties and powers necessary for the prevention, control, and eradication of diseases which may include the supervision of sheep, handling of sheep, shipping, transporting or moving of sheep, regulation of sheep, the making of rules concerning sheep and all other matters pertaining to sheep either in the state of Idaho or which may be brought into or shipped from the state of Idaho. The board shall also be responsible for all matters relating to the prevention, control, and eradication of diseases pertaining to goats within the state of Idaho with the provisions of this chapter also applying to goats. The board may also designate a portion of the assessment, as provided in sections 25-130 and 25-131, Idaho Code, to help carry on the work for the prevention and control of damage caused by predatory animals and other

vertebrate pests. [I.C., § 25-128, as added by 1997, ch. 116, § 3, p. 289; am. 1998, ch. 205, § 2, p. 726.]

**Compiler's notes.** Former § 25-128 was amended and redesignated as § 25-128A by § 2 of S.L. 1997, ch. 116, effective March 15, 1997.

The amendment to this section by S.L. 1998, ch. 205, § 2, became effective Septem-

ber 23, 1998, upon referendum approval of the provisions of the act by wool growers. For further details about this referendum, see the text of § 25-160.

Section 3 of S.L. 1998, ch. 205 is compiled as § 25-1612A.

### **25-128A. Duties and powers of the state animal damage control board. [Amended and Redesignated.] —**

**Compiler's notes.** This section was redesignated as § 25-2612A by § 3 of S.L. 1998, ch. 205. This redesignation became effective upon referendum approval of the provisions of the

act by wool growers. For further details about this referendum, see the text of § 25-160.

This section was formerly compiled as § 25-128.

**25-129. Rules — Executive secretary, veterinarian, inspectors, salaries, expenses and office. —** (1) The board shall elect one (1) of its members chairman. The said board is empowered to make rules for governing itself and such rules as it may deem necessary for the enforcement of the provisions of this chapter and to enforce all such rules, and shall have exclusive control of all matters pertaining to the sheep industry. It shall be empowered to make and enforce rules for quarantining, or otherwise treating sheep which may be infected, affected or infested with ticks, lice or any other parasites detrimental or injurious to sheep, or any infectious or contagious disease of sheep and for the prevention, control and eradication of infectious or contagious diseases, ticks, lice or other parasites detrimental to sheep. All such rules adopted by said board shall have the same force and effect as law and any person, association, firm or corporation violating such rules shall be deemed guilty of a misdemeanor.

(2) The board is empowered to select an executive secretary who may or may not be a member of the board, and such executive secretary shall have the authority and power to sign any and all lawful claims or vouchers to be made, filed or drawn by or on behalf of the board against the sheep commission account, and for such purposes he shall be regarded as the administrative head of the agency and he shall perform such other and further duties as the board shall direct.

(3) The board is empowered to appoint, with the approval of the governor, a veterinarian in charge, who must be duly licensed in the state of Idaho and who is a graduate of a recognized and accredited school of veterinary medicine, whose duties and powers shall be defined and prescribed by said board; which said officer shall be bonded to the state of Idaho in the time, form and manner prescribed by chapter 8, title 59, Idaho Code. The veterinarian in charge shall receive such compensation as may be allowed by said board and actual and necessary expenses incurred in the performance of his duties. The veterinarian in charge shall be at all times subject to the authority of the board and shall have the same powers hereinafter provided for all other inspectors appointed by the board under this chapter. The veterinarian in charge shall have authority and power to sign all lawful



claims or vouchers filed or drawn on behalf of the board against the sheep commission account.

(4) The board is hereby empowered to appoint all other inspectors, veterinarians and such other employees and assistants as may be necessary to carry out the duties and powers herein conferred and fix the compensation of all such appointees. All salaries and expenses of every kind incurred in carrying out the provisions of this chapter shall be paid from the sheep commission account.

(5) Inspectors and veterinarians appointed by the board of sheep commissioners shall have the power and duty to assist law enforcement entities in the enforcement of all laws of the state pertaining to the identification, inspection and transportation of sheep and other livestock, and shall have general authority to assist law enforcement entities in the enforcement of theft laws of the state with respect to sheep and other livestock. [1951, ch. 250, § 4, p. 527; am. 1969, ch. 156, § 1, p. 484; am. 1971, ch. 136, § 13, p. 522; am. 1974, ch. 18, § 99, p. 364; am. 1977, ch. 134, § 1, p. 289; am. 1985, ch. 63, § 4, p. 125; am. 1997, ch. 116, § 4, p. 289.]

**Compiler's notes.** The words "this act" as they appeared in S.L. 1951, ch. 250, § 4, refer to S.L. 1951, ch. 250, which is compiled as §§ 25-126 — 25-151.

Section 14 of S.L. 1971, ch. 136 is compiled as § 25-1101.

Section 100 of S.L. 1974, ch. 18 is compiled as § 25-136.

Section 2 of S.L. 1977, ch. 134 is compiled as § 25-1109.

**25-130. Fixing assessment rate — Payment of claims — Report — Inspection, quarantine and treatment of sheep — Districts.** — The board shall meet and fix the rate of special assessment to be levied as provided for in this chapter. Any change in the rate of the special assessment shall be made to be effective at the start of a calendar year. The board shall audit all bills of salaries and expenses incurred in the enforcement of this chapter that may be payable from the sheep commission account which shall be audited, allowed and paid as other claims against the state. The board shall have power to order an inspection or quarantine of any sheep in the state of Idaho, whether diseased or exposed to disease, to compel dipping or other treatment of sheep, whether diseased or exposed to disease, at such times and as often as it deems necessary to insure the suppression or eradication of any infectious or contagious disease of sheep and divide the state into such districts as may be necessary for the enforcement of this chapter. [1951, ch. 250, § 5, p. 527; am. 1969, ch. 156, § 2, p. 484; am. 1985, ch. 63, § 5, p. 125; am. 1986, ch. 3, § 1, p. 41; am. 1997, ch. 116, § 5, p. 289.]

**Compiler's notes.** Section 6 of S.L. 1997, ch. 116 is compiled as § 25-137.

**Sec. to sec. ref.** This section is referred to in § 25-128.

**25-131. Sheep commission account — Assessment — First purchaser to make report — Penalty for failure to make report — Appropriation.** — (1) In order for the board of sheep commissioners to carry out the provisions of this chapter, the board shall assess, levy and collect an assessment established by the board, not to exceed six cents (6¢)

per pound on all wool, in the grease basis, sold through commercial channels. In the event that a sheep, which produces wool subject to this assessment, shall be located outside the state of Idaho during a part of the assessment year, the amount of the assessment shall be reduced on a pro rata basis. Such assessment shall be levied and assessed to the producer at the time of the first sale of wool and shall be deducted by the first purchaser from the price paid to the producer at the time of such first sale. The assessment provided in this section shall not be levied or collected on any casual sale.

(2) The assessment provided by this section shall constitute a lien prior to all other liens and encumbrances upon such wool except liens which are declared prior by operation of a statute of this state.

(3) If the first purchaser lives or has his principal office in another state, the producer shall make the reports and pay the assessments to the board as required under this section unless the first purchaser agrees in writing to make such reports and pay such assessments.

(4) The first purchaser shall specify the amounts of assessments withheld in any written statements made to the producer.

(5) The first purchaser shall make reports to the board on forms prescribed by the board, and no first purchaser shall fail to make such reports or falsify any such reports. The assessment deducted and withheld by a first purchaser, as required in subsection (1) of this section, shall be paid to the board on a quarterly calendar year basis, and shall be due and payable within thirty (30) days after the end of the quarter. All moneys collected by the board under the provisions of this chapter shall be paid to the state treasurer. All moneys received from the assessment pursuant to this section shall be deposited in the state treasury by the state treasurer to the credit of a special account in the state operating fund hereby created to be known as the "sheep commission account."

(6) A first purchaser who delays transmittal of reports and payments of assessments beyond the time stated in subsection (5) of this section shall pay five percent (5%) of the amount due for the first month of delay and one percent (1%) of the amount due for each month of delay thereafter. Such moneys shall be deposited in the sheep commission account.

(7) In addition thereto, the said account shall consist of any appropriations made by the legislature for the use of and expenditure by said board. All fees of every kind collected under the provisions of this chapter, or under any rules and regulations made pursuant to the provisions of this chapter, shall be deposited in the state treasury in the manner hereinabove described. The moneys in said special account are hereby appropriated for the use and expenditure of said board carrying out the provisions of this chapter and the rules and regulations made herein and said account is hereby declared to be a continuing account.

(8) All moneys appropriated to the board for the purposes of sheep disease prevention, abatement, suppression, control or eradication shall be expended by the board only for those purposes, in accordance with the duties specified in section 25-128(1), Idaho Code.

(9) All moneys received by the state board of sheep commissioners from that portion of the special assessment which is made to carry on the work for



prevention and control of damage caused by predatory animals and other vertebrate pests shall be expended by the sheep commission in the respective districts comprising the counties where the assessment was collected less the actual and necessary administrative costs for carrying out the provisions of this chapter. All moneys received by such account for work for prevention and control of damage caused by predatory animals and other vertebrate pests except as herein otherwise provided shall be expended by the sheep commission within the district or districts specified by the party or agency providing such funds and any trust fund must be held inviolate for the purposes of the trust. [1951, ch. 250, § 6, p. 527; am. 1957, ch. 176, § 1, p. 340; am. 1959, ch. 57, § 1, p. 124; am. 1967, ch. 38, § 1, p. 60; am. 1969, ch. 156, § 3, p. 484; am. 1971, ch. 67, § 1, p. 153; am. 1977, ch. 136, § 1, p. 292; am. 1983, ch. 123, § 1, p. 317; am. 1985, ch. 63, § 6, p. 125.]

**Compiler's notes.** Section 7 of S.L. 1985, ch. 63 is compiled as § 25-137.

Section 2 of S.L. 1971, ch. 67, read: "An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its

passage and approval, and retroactively to January 1, 1971."

**Cross ref.** Annual state tax levy, § 63-901.

**Sec. to sec. ref.** This section is referred to in §§ 25-128, 25-159.

**25-132. Powers of board to collect and cancel assessment.** — The board shall have the power to prosecute in the name of the state of Idaho any suit or action for collection of the assessment provided for in section 25-131, Idaho Code. The board by order may cancel an assessment which has been delinquent for five (5) years or more, if it determines that: (1) The amount of the assessment is less than one dollar (\$1.00) and that further collection effort or expense does not justify the collection thereof, or (2) the assessment is wholly uncollectible. [I.C., § 25-132, as added by 1969, ch. 156, § 5, p. 484; am. 1983, ch. 123, § 2, p. 317.]

**Compiler's notes.** Section 3 of S.L. 1983, ch. 123 declared an emergency and provided that the act should be in full force and effect

on and after its passage and approval retroactive to January 1, 1983. Approved April 1, 1983.

### **25-132A. Statement of sheep grower — Contents — Filing. [Repealed.]**

**Compiler's notes.** This section, which comprised I.C., § 25-132A, as added by 1969,

ch. 156, § 6, p. 484, was repealed by S.L. 1990, ch. 137, § 1.

### **25-132B. Penalty for violation. [Repealed.]**

**Compiler's notes.** This section, which comprised I.C., § 25-132B, as added by 1969,

ch. 156, § 7, p. 484, was repealed by S.L. 1990, ch. 137, § 1.

**25-133. Cooperation with federal authorities.** — The board is hereby authorized to accept on behalf of the state, the rules and regulations prepared by the secretary of agriculture of the United States under and in pursuance of section numbered three (3) (21 U.S.C. § 114) of the Act of Congress approved May 29, 1884, entitled "an act for the establishment of the bureau of animal industry, to prevent the exportation of diseased cattle,

and to provide means for the suppression of and extirpation of pleuropneumonia and other contagious diseases among domestic animals," and to cooperate with the authorities of the United States in the enforcement of the provisions of said act; provided, however, that all action taken by the employees of the United States while acting under the provisions of this chapter as state inspectors of sheep and bucks, shall be exercised under the joint supervision of the board and the chief of the bureau of animal industry. [1951, ch. 250, § 8, p. 527.]

**Compiler's notes.** For words "this chapter" see compiler's notes, § 25-129 relative to "this act."

The citation enclosed in parentheses so appeared in the laws as enacted.

**25-134. Entrance into state by federal authorities.** — The board is authorized to give its consent that the bureau of animal industry of the United States and its employees shall come within the state of Idaho for the purposes connected with the exportation of diseased sheep and for the suppression and extirpation of any contagious, infectious or communicable disease among sheep. [1951, ch. 250, § 9, p. 527.]

**25-135. Local assistance from peace officers.** — All federal authorities authorized as aforesaid and the various inspectors of this state shall, subject to the approval of the board, have power to call upon any constable, sheriff or other peace officer in any county in this state to assist them in the discharge of their duties in carrying out the provisions of this act and the act of congress aforesaid, and it is hereby made the duty of said officers to assist them who so requested and the said federal inspectors shall have the same power to enforce the laws of this state as the various inspectors of the state when authorized as aforesaid and engaged in the discharge of their official duties; provided, that any person, company or corporation refusing to comply with the orders of such officer or federal inspector shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished as provided in section 25-137. [1951, ch. 250, § 10, p. 527.]

**Compiler's notes.** For words "this act" see compiler's notes, § 25-129.

**25-136. Appropriation for salary and expenses.** — The salaries, expenses and maintenance of the said board and all other salaries and expenses not otherwise provided for, not heretofore provided for in this act, shall be paid out of the sheep commission fund. The legislature may each year set aside from the total appropriation which it shall make for the care, handling, inspection and protection and eradication of disease of livestock in the state, that proportion of the total amount which the value of the sheep and goats in the state of Idaho bears to the value of other livestock in the state as determined by the director of the department of agriculture. [1951, ch. 250, § 11, p. 527; am. 1969, ch. 156, § 8, p. 484; am. 1974, ch. 18, § 100, p. 364.]



**Compiler's notes.** For words "this act" see compiler's notes, § 25-129.

Sections 99 and 101 of S.L. 1974, ch. 18 are compiled as §§ 25-129 and 25-201.

Section 9 of S.L. 1969, ch. 156, provided

that this act shall be effective on and after the first day of July, 1969.

Section 263 of S.L. 1974, ch. 18, provided the act should be effective on and after July 1, 1974.

**25-137. Punishment for disregard of quarantine rules — Taking evidence.** — Any person, company, corporation or association or any agent, servant or employee of such, who shall violate or disregard any quarantine provision of this chapter or rules promulgated thereunder or any other provision of law or any sanitary or quarantine rule, order of the board or inspector thereof or any of the provisions of this chapter or rules promulgated thereunder, shall be deemed guilty of a misdemeanor and upon conviction be fined not less than one hundred dollars (\$100) nor more than five thousand dollars (\$5,000) for each offense. For the purpose of carrying out the provisions of this chapter, the board is authorized to subpoena and examine witnesses and to administer oaths for the purpose of soliciting information to be used in enforcing the provisions hereof and in the furtherance of the quarantine, sanitary or other rules. [1951, ch. 250, § 12, p. 527; am. 1985, ch. 63, § 7, p. 125; am. 1997, ch. 116, § 6, p. 289.]

**Compiler's notes.** Section 6 of S.L. 1985, ch. 63 is compiled as § 25-131.

Section 5 of S.L. 1997, ch. 116 is compiled as § 25-130, § 7 repealed §§ 25-141, 25-142 and

25-151 and § 8 is compiled as § 25-141A - 25-141E.

**Sec. to sec. ref.** This section is referred to in § 25-135.

**25-138. Filing and enforcing of liens.** — All liens provided for in this chapter shall be filed, enforced and foreclosed as if it were an income tax lien as provided by chapter 30, title 63, Idaho Code, and said statutes are hereby declared to apply to and include any liens provided for in this chapter. [1951, ch. 250, § 13, p. 527; am. 1985, ch. 63, § 8, p. 125.]

**25-139. Attachment of property.** — Whenever it shall be necessary in the enforcement of the provisions of this chapter for the board or any of its inspectors to take charge of any sheep, corral, building or other place, demand therefor shall be made upon the owner or person in charge thereof; in event of refusal of said owner or person in charge of said sheep, corral, building or place, said board or any inspector may have said sheep, corral, building or place seized and held by writ of attachment to issue in the same manner as provided by the general laws of this state; provided, that action shall be brought in the name of the state of Idaho and no bond on attachment be required. [1951, ch. 250, § 14, p. 527; am. 1985, ch. 63, § 9, p. 125.]

**Compiler's notes.** Section 10 of S.L. 1985, ch. 63 is compiled as § 25-142.

**Cross ref.** Attachment in general, § 8-501 et seq.

**25-140. Breaking of quarantine.** — Breaking quarantine shall mean the taking of any sheep or allowing any sheep quarantined by the board or inspector to go within or without any building, corral, premises or range quarantined by the board or inspector, or the taking of any clean sheep

within any building, corral, premises or range quarantined by the board or inspector. [1951, ch. 250, § 15, p. 527.]

### **25-141. Scabies eradication — Cooperation of state board with United States. [Repealed.]**

**Compiler's notes.** This section which comprised, S.L. 1951, ch. 250, § 16, p. 527, was repealed by S.L. 1997, ch. 116, § 7, effective March 15, 1997. For present law see §§ 25-141A — 25-141E.

**25-141A. Scrapie eradication area. —** (1) The state of Idaho is engaged in the eradication of scrapie from sheep and goats within this state and in cooperation with the United States department of agriculture in the eradication of scrapie from sheep and goats outside of this state. The board is authorized to quarantine the whole state or any portion thereof and the movement of sheep and goats is prohibited except in conformity with the provisions of this chapter and the rules of the board promulgated for the purpose of preventing the introduction of scrapie into Idaho from any other state or country. Any person, firm, corporation or other recognized legal entity, who shall bring into the state or move within the state any sheep or goats in violation of the provisions of this chapter or the rules of the board, shall, upon conviction, be fined not less than one hundred dollars (\$100) nor more than five thousand dollars (\$5,000) for each animal brought into the state or moved within the state in violation of the provisions of this chapter or rules promulgated thereunder.

(2) The board shall issue permits authorizing the moving of sheep and goats to and from and through and across quarantine areas for exhibition, sale or feeding purposes and for transporting or moving sheep and goats from one (1) locality to another outside of quarantine areas. The permits shall be issued under rules of the board promulgated with due regard to the convenience of the sheep and goat owners and the protection of sheep and goats within the quarantine areas established as herein provided for the eradication of scrapie. [I.C., § 25-141A, as added by 1997, ch. 116, § 8, p. 289.]

**Compiler's notes.** Section 6 of S.L. 1997, ch. 116 is compiled as § 25-137, § 7 repealed §§ 25-141, 25-142 and 25-151.

**25-141B. Extent of eradication area — Supervision and quarantine of premises. —** The state board of sheep commissioners is hereby authorized to quarantine any portion of this state when the fact is determined that sheep or goats are affected with scrapie or any other contagious, infectious or communicable disease. The area designated for the control of scrapie may consist of the entire state, a portion of the state, entire county, or part of the county, if it is less than the entire county; the boundary of the area shall be clearly defined in the order for the establishment of the area. [I.C., § 25-141B, as added by 1997, ch. 116, § 8, p. 289.]



**25-141C. Sheep — Goats — Scrapie — Or other diseases — Herd depopulation.** — In order to prevent the introduction or dissemination of scrapie or other contagious, infectious or communicable diseases into or among the sheep or goat population of Idaho, the board is granted authority to identify diseases of concern and to condemn infected herds and to require the destruction or other disposition as approved by the board of such herd or herds. The board of sheep commissioners is authorized to reimburse the owner by cash payment for any affected or exposed sheep or goats which have been condemned, appraised and slaughtered or destroyed or otherwise disposed of by direction of the board of sheep commissioners and for property destroyed and for labor employed in digging trenches and for cleaning and disinfecting premises where such infected or exposed sheep and goats have been kept; provided, that the board shall only pay the difference between the appraised price less federal indemnity and salvage value for any sheep or goats condemned and slaughtered or destroyed under this section and the actual costs for burials or disposal of animal carcasses and for cleaning and disinfecting of premises where infected or exposed sheep or goats have been kept. In the event federal indemnity is unavailable in regard to the value of the sheep or goats, the board shall only pay the difference between the appraised price and salvage value. Appraisals shall be performed by a team comprised of an animal health representative, the owner and a person with experience in sheep or goat marketing. A maximum per head value may be established by rules of the board. The board or its designee may grant a hearing to any person, under such rules as the board may prescribe which are in compliance with chapter 52, title 67, Idaho Code, when the appraisal price is in dispute. An appeal may be taken from the decision of the board or its designee under the provisions of chapter 52, title 67, Idaho Code. [I.C., § 25-141C, as added by 1997, ch. 116, § 8, p. 289.]

**25-141D. Creation of sheep and goat disease indemnity fund.** — There is hereby created within the department of agriculture a state board of sheep commissioners account to be known as the sheep and goat disease indemnity fund. funds may be received into this account from any source including, but not limited to, donations, gifts, grants, federal funds, sheep commission funds, or appropriations from general or dedicated accounts. Moneys received into this account shall be deposited with the state treasurer to the credit of the sheep and goat disease indemnity fund. Moneys deposited into this account may only be used to indemnify owners whose animals or herds have been condemned or destroyed or otherwise disposed of by direction of the board, and for property destroyed, for labor employed in digging trenches, and for cleaning and disinfecting of premises where infected or exposed sheep and goats have been kept. [I.C., § 25-141D, as added by 1997, ch. 116, § 8, p. 289.]

**25-141E. Indemnity payments restricted.** — Indemnity shall only be paid to an owner of sheep or goats for any animals or herds diagnosed to be infected with or exposed to scrapie or any other contagious, infectious or communicable disease, as determined by the board, for sheep or goats born

in Idaho or sheep or goats imported in compliance with existing Idaho statutes or rules promulgated pursuant thereto. [I.C., § 25-141E, as added by 1997, ch. 116, § 8, p. 289.]

**Compiler's notes.** Former § 25-141E, which comprised 1951, ch.250, § 17, p.527; am. 1985, ch. 63, § 10, p. 125 was repealed by S.L. 1997, ch.116, § 7, effective March 15,

1997. For present law see §§ 25-141A - 25-141E.

Section 9 of S.L. 1997, ch 116 is compiled as § 25-143.

## **25-142. Quarantines against sheep diseases. [Repealed.]**

**Compiler's notes.** This section which comprised 1951, ch. 250, § 17, p. 527; am. 1985, ch. 63, § 10, p. 125 was repealed by S.L. 1997,

ch. 116, § 7, effective March 15, 1997. For present law see §§ 25-141A — 25-141E.

**25-143. Transportation of sheep from quarantined area.** — It shall be unlawful for any transportation company or operator of any motor truck to receive for transportation or transport from the quarantined area of this state into or through an unquarantined area of this state or receive for transportation or transport within the quarantined area of this state any sheep, or as a connecting carrier knowingly receive without the quarantined area, sheep from the quarantined area, and transport the same within the state, except as hereinafter provided; nor shall any person, company or corporation deliver for such transportation to any transportation company, or operator of any motor truck, any sheep from the quarantined area, except as hereinafter provided; nor shall any person, company or corporation drive on foot or cause to be driven on foot or transport in private conveyances or otherwise move within the quarantined area, any sheep except as herein-after provided; and the state board of sheep commissioners shall make and promulgate rules which shall permit and govern the inspection, treatment, certification, handling and method and manner of delivery and shipment or other movement of sheep from a quarantined area of this state, or the shipment or other movement of sheep within a quarantined area of this state. [1951, ch. 250, § 18, p. 527; am. 1997, ch. 116, § 9, p. 289.]

**Compiler's notes.** Sections 8 and 10 are compiled as §§ 25-141A — 25-141E and 25-146, respectively.

### **DECISIONS UNDER PRIOR LAW**

#### **Prosecutions.**

Fact that sheep have been in an infected district against which a quarantine has been declared, and fact that such sheep were driven direct from such district into this state,

is sufficient to establish a capability and liability to communicate disease. *State v. Rasmussen*, 7 Idaho 1, 59 P. 933, 52 L.R.A. 78, 97 Am. St. R. 234 (1900), aff'd, 181 U.S. 198, 21 S. Ct. 594, 45 L. Ed. 820 (1901).

**25-144. Movement of sheep from quarantined into unquarantined area prohibited.** — It shall be unlawful to move sheep from a quarantined area of the state in any manner whatsoever into an unquarantined area of this state or for connecting carriers to receive sheep of the quarantined area at a point outside of the quarantined area and



transport the same within the state, except in accordance with the rules and regulations of the state board of sheep commissioners. It shall be unlawful to move any sheep within a quarantined area of the state except in accordance with the rules and regulations of the said board. [1951, ch. 250, § 19, p. 527.]

#### DECISIONS UNDER PRIOR LAW

##### ANALYSIS

Constitutionality.  
Venue of action.

##### Constitutionality.

This section is within police power of state and not violation of federal constitution as regulation of interstate commerce. *Rasmussen v. Idaho*, 181 U.S. 198, 21 S. Ct.

594, 45 L. Ed. 820 (1901).

##### Venue of Action.

Bringing sheep into any county of the state from a quarantined district is an offense, and prosecution therefor may be instituted in any county where sheep are found. *State v. Rasmussen*, 7 Idaho 1, 59 P. 933, 52 L.R.A. 78, 97 Am. St. R. 234 (1900), *aff'd*, 181 U.S. 198, 21 S. Ct. 594, 45 L. Ed. 820 (1901).

**25-145. Quarantine of diseased animals.** — The representatives of the state board of sheep commissioners or any inspector or agent of the bureau of animal industry of the United States department of agriculture shall have authority to quarantine, where found, or in any convenient place nearby, any animals affected or infected with or exposed to the contagion or infection of any contagious, infectious or communicable disease. The establishment of any such quarantine shall be immediately reported to the board and said board is authorized and empowered to prescribe such rules and regulations as may be deemed necessary for the movement within the state and the handling, method of treatment and disposition of such animals so quarantined. Written notice of such quarantine shall be given to the owner or custodian of the quarantined animals and it shall be unlawful to move, treat, dip or dispose of such animals, except in accordance with said rules and regulations of the board. [1951, ch. 250, § 20, p. 527.]

**25-146. Inspection and treatment of diseased sheep.** — The representative of the state board of sheep commissioners or any inspector or agent of the United States bureau of animal industry shall have authority to enter upon any grounds or premises where sheep are kept and to inspect, diagnose and treat sheep found thereon. They shall be authorized and empowered to require owners of sheep to apply such remedies, dips and other curative, protective or preventive agents as may by the board be deemed necessary in order to prevent the introduction or dissemination of disease among the sheep of this state or to effect a cure of affected or infected sheep and in the event that any owner or custodian of such sheep shall refuse to comply with the rules of the board regarding the use of such remedies, dippings and curative agents within the time set by the board and in the manner provided in this act or by the rules of said board, then the board shall be empowered to treat or dip such sheep and the cost thereof, together with all incidental expenses therewith, if any, which shall include the cost and expense of the care and maintenance of said sheep during the time of their custody by the board or its representatives as herein provided,

shall be borne by the owner of the sheep so treated or dipped and shall be, until paid, a lien against such sheep. [1951, ch. 250, § 21, p. 527; am. 1997, ch. 116, § 10, p. 289.]

**Compiler's notes.** For words "this act" see compiler's notes, § 25-129.

Section 9 of S.L. 1997, ch. 116 is compiled as § 25-143.

**25-147. Diseases — Notice to state board — Evidence of infection — Rules.** — Whenever any sheep becomes affected or infected with any contagious, infectious or communicable disease or whenever symptoms of any contagious, infectious or communicable disease shall have developed in any sheep, notice shall be given in writing or facsimile to the board by the owner or agent in charge of such sheep. The board shall be authorized and empowered to make and promulgate rules not inconsistent with law, for the especial enforcement of this section as may by the board be deemed necessary to prevent the introduction or dissemination of any infection among sheep of this state. [1951, ch. 250, § 22, p. 527; am. 1997, ch. 116, § 11, p. 289.]

**25-148. Importation of sheep — Notice of intention.** — When an owner or person in charge of sheep desires to bring such sheep into this state from an adjoining state or territory, he shall notify the state board of sheep commissioners or its agent, in writing, or by telephone or by facsimile, of such intention before entering the state, stating the time and place where such sheep shall enter; provided, however, that no notice will be required when sheep are in transit through the state, except sheep from a known infected area shall only be admitted in accordance with the rules of the board. [1951, ch. 250, § 23, p. 527; am. 1997, ch. 116, § 12, p. 289.]

**Compiler's notes.** Section 13 of S.L. 1997, ch. 116 is compiled as § 25-152.

**25-149. Keeping of diseased sheep — Liability of owners.** — Any person, firm or corporation owning or keeping sheep known by him to be diseased or exposed to any contagious, infectious or communicable disease shall immediately report said disease to the board and comply with the rules, regulations and orders of said board and in the event of his failure so to do he shall be liable in the full amount of damage occasioned to other sheep owners or holders to whose sheep such disease has been communicated or which have contracted or become infected with any such disease from such diseased or exposed sheep. [1951, ch. 250, § 24, p. 527.]

#### DECISIONS UNDER PRIOR LAW

##### **Pleadings and Proof.**

In a civil action for damages resulting from negligence of owner of sheep in permitting his herd, which was afflicted with scab, to become mingled with herd of another, and communi-

cating disease to such herd, it need not be alleged or proved that defendant knew of the existence of scab among his sheep. *North & Douglas v. Woodland*, 12 Idaho 50, 85 P. 215, 6 L.R.A. (n.s.) 921 (1906).

### **25-150. Regulation of public sale yards and public auction sales.**

— For the purpose of preventing the spread of contagious, infectious or communicable diseases among sheep the state board of sheep commissioners is hereby empowered to make reasonable rules and regulations with regard to the handling of sheep in or at public sale yards and public auction sales where sheep are generally sold and shall have the power and authority to prevent the sales of sheep at such public sale yards or public auction sales unless said rules and regulations shall be complied with. [1951, ch. 250, § 25, p. 527.]

### **25-151. Public buck herds — Rules and regulations. [Repealed.]**

**Compiler's notes.** This section which comprised, S.L. 1951, ch. 250, § 26, p. 527, was repealed by S.L. 1997, ch. 116, § 7, effective March 15, 1997.

**25-152. Severability.** — The provisions of this chapter are hereby declared to be severable and if any provision of this chapter or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this chapter. [I.C., § 25-152, as added by 1997, ch. 116, § 13, p. 289.]

**Compiler's notes.** Section 12 of S.L. 1997, ch. 116 is compiled as § 25-148. Section 14 of S.L. 1997, ch. 116 declared an emergency. Approved March 15, 1997.

**25-153. Short title.** — Sections 25-153 through 25-160, Idaho Code, shall be known and may be cited as the "Sheep, Lamb and Wool Promotion, Research and Education Act." [I.C., § 25-153, as added by 1998, ch. 205, § 4, p. 726.]

**Compiler's notes.** The enactment of this section by S.L. 1998, ch. 205, § 4 became effective September 23, 1998, upon referendum approval of the provisions of the act by wool growers. For further details about this referendum, see the text of § 25-160. Section 3 of S.L. 1998, ch. 205 is compiled as § 25-2612A. **Sec. to sec. ref.** This section is referred to in § 25-155.

**25-154. Promotion, research and education policy.** — It is to the best interests of all the people of the state of Idaho that the abundant and natural resources of Idaho be protected, fully developed and uniformly distributed. It is in the public interest and within the exercise of the police power of the state to protect the public health; to prevent fraudulent practices; to provide the means for the development of markets; to provide production research and education; and to encourage new product development and promotion of the sheep, lamb and wool industry. [I.C., § 25-154, as added by 1998, ch. 205, § 4, p. 726.]

**Compiler's notes.** The enactment of this section by S.L. 1998, ch. 205, § 4 became effective September 23, 1998, upon referendum approval of the provisions of the act by wool growers. For further details about this referendum, see the text of § 25-160.



**25-155. Duties and powers of the commission pertaining to promotion, research and education policy.** — (1) The commission may contract with the Idaho wool growers association, inc., or a similar agency for the administration of the sheep commission's business pertaining to the promotion, research and education policy.

(2) In the administration of sections 25-153 through 25-160, Idaho Code, the commission shall, in conjunction with the Idaho wool growers association, inc., have the following duties, authorities and powers:

- (a) To conduct a campaign of research, education and publicity;
  - (b) To find new markets for sheep, lamb and wool products;
  - (c) To give, publicize and promulgate reliable information showing the value of sheep, lamb and wool products for any purpose for which it is found useful and profitable;
  - (d) To make public and encourage the widespread national and international use of sheep, lamb and wool products produced in Idaho;
  - (e) To investigate and participate in studies of the problems peculiar to the producers of sheep, lamb and wool in Idaho.
- (3) The commission shall have the duty, power and authority:
- (a) To take such action as the commission deems necessary or advisable in order to stabilize and protect the sheep, lamb and wool industry of the state and the health and welfare of the public;
  - (b) To sue and be sued;
  - (c) To enter into such contracts as may be necessary or advisable;
  - (d) To appoint and employ officers, agents and other personnel, including experts in agriculture and the publicizing of the products thereof, and to prescribe their duties and fix their compensation;
  - (e) To make use of such advertising means and methods as the commission deems advisable and to enter into contracts and agreements for research and advertising within and without the state;
  - (f) To cooperate with any local, state or national organization or agency, whether voluntary or created by the law of any state or by national law, engaged in work or activities similar to the work and activities of the commission, and to enter into contracts and agreements with such organizations or agencies for carrying on a joint campaign of research, education and publicity and reciprocal enforcement;
  - (g) To lease, purchase or own the real or personal property deemed necessary in the administration of the provisions of this act;
  - (h) To prosecute in the name of the state of Idaho any suit or action for collection of the tax or assessment provided for in the provisions of this act;
  - (i) To adopt, rescind, modify and amend all necessary and proper orders and resolutions for the procedure and exercise of its powers and the performance of its duties;
  - (j) To incur indebtedness and carry on all business activities;
  - (k) To keep books and records and accounts of all its doings, which books, records and accounts shall be open to inspection by the state controller and the public at all times;
  - (l) To adopt from time to time, alter, rescind, modify and/or amend all proper and necessary rules and orders for the exercise of its powers and

performance of its duties under this act. [I.C., § 25-155, as added by 1998, ch. 205, § 4, p. 726.]

**Compiler's notes.** The enactment of this section by S.L. 1998, ch. 205, § 4 became effective September 23, 1998, upon referen-

dum approval of the provisions of the act by wool growers. For further details about this referendum, see the text of § 25-160.

**25-156. Deposit and disbursement of funds.** — (1) Immediately upon receipt, all grants, donations and gifts of funds from any source for expenditure for any purpose consistent with this chapter which may be specified as a condition of any grant, donation or gift, and all of the revenues received under the provisions of section 25-159, Idaho Code, shall be deposited in one (1) or more separate accounts in the name of the commission in one (1) or more banks or trust companies approved under chapter 27, title 67, Idaho Code, as state depositories. The commission shall designate such banks or trust companies. All funds so deposited are hereby continuously appropriated for the purpose of carrying out the provisions of this act.

(2) Funds can be withdrawn or paid out of such accounts only upon checks or other orders upon such accounts signed by two (2) officers designated by the commission.

(3) The right is reserved to the state of Idaho to audit the funds of the commission at any time.

(4) On or before January 15 of each year, the commission shall file with the senate agricultural affairs committee, the house agricultural affairs committee, the legislative council, the state controller, and the division of financial management, a report showing the annual income to the commission during the preceding fiscal year. The report shall also include an estimate of income to the commission for the current fiscal year and a projection of anticipated expenses by category for the current fiscal year. The report shall also include a reconciliation between the estimated income and expenses projected and the actual income and expenses of the preceding fiscal year.

(5) All moneys received or expended by the commission shall be audited annually by a certified public accountant designated by the commission, who shall furnish a copy of such audit to the state controller and to the senate agricultural affairs committee and the house agricultural affairs committee. The audit shall be completed within ninety (90) days following the close of the fiscal year.

(6) The expenditures of the commission are expressly exempted from the provisions of sections 67-2007 and 67-2008, Idaho Code. [I.C., § 25-156, as added by 1998, ch. 205, § 4, p. 726.]

**Compiler's notes.** The enactment of this section by S.L. 1998, ch. 205, § 4, became effective September 23, 1998, upon referen-

dum approval of the provisions of the act by wool growers. For further details about this referendum, see the text of § 25-160.

**25-157. Bonds of agents and employees.** — The administrator, or any agent or employee appointed by the commission shall be bonded to the state of Idaho in the time, form and manner as prescribed by chapter 8, title 59, Idaho Code. The cost of the bond is an administrative expense under this



act. [I.C., § 25-157, as added by 1998, ch. 205, § 4, p. 726.]

**Compiler's notes.** The enactment of this section by S.L. 1998, ch. 205, § 4, became effective September 23, 1998, upon referen-

dum approval of the provisions of the act by wool growers. For further details about this referendum, see the text of § 25-160.

**25-158. State not liable for acts or omissions of commission or of its employees.** — The state of Idaho is not liable for the acts or omissions of the commission or any member thereof or any officer, agent or employee thereof. [I.C., § 25-158, as added by 1998, ch. 205, § 4, p. 726.]

**Compiler's notes.** The enactment of this section by S.L. 1998, ch. 205, § 4, became effective September 23, 1998, upon referen-

dum approval of the provisions of the act by wool growers. For further details about this referendum, see the text of § 25-160.

**25-159. Assessment.** — In addition to the assessment described in section 25-131, Idaho Code, there is hereby levied upon all wool grown annually in the state of Idaho an assessment of up to four cents (4¢) per pound of wool marketed. The assessment shall be collected in the amount authorized by the Idaho wool growers association and in the same manner as prescribed in this chapter with all provisions of this chapter, and corresponding rules, applying thereto. [I.C., § 25-159, as added by 1998, ch. 205, § 4, p. 726.]

**Compiler's notes.** The enactment of this section by S.L. 1998, ch. 205, § 4, became effective September 23, 1998, upon referendum approval of the provisions of the act by

wool growers. For further details about this referendum, see the text of § 25-160.

**Sec. to sec. ref.** This section is referred to in § 25-156.

**25-160. Referendum for wool growers.** — Prior to the provisions of this act becoming effective, a referendum shall be held to determine if producers favor the provisions of this act. The question shall be submitted by secret ballot upon which the words "Do you favor a promotion, research, and education program for the Idaho sheep industry that is funded by all producers with no refund provision?" are printed with a square before each of the words "YES" and "NO" with directions to insert an "X" mark in the square before the proposition which the voter favors. If a majority of the producers voting in the referendum or a majority of the production represented by the producers voting in the referendum vote in favor of the question submitted, the provisions of this act shall become effective.

(1) The procedures necessary to initiate a referendum in subsequent years, but not less than five (5) years from the passage of the initial referendum, are as follows:

(a) A referendum shall be held if the Idaho department of agriculture receives a petition requesting such referendum signed by ten percent (10%) or more of sheep producers who have paid an assessment to the Idaho sheep commission in either of the two (2) immediate past calendar years; or

(b) A referendum shall be held if the Idaho department of agriculture receives a written request for such referendum from the Idaho sheep commission.



(2)(a) Any referendum shall be conducted only among sheep producers who paid an assessment to the Idaho sheep commission during one (1) of the two (2) years prior to the referendum.

(b) Any referendum must be supervised by the Idaho department of agriculture.

(c) Any referendum shall be held, and the result determined and declared by the director of the department of agriculture, and recorded in the office of the secretary of state.

(d) Notice of any referendum must be given by the commission in a manner determined by it. The ballots must be prepared by the commission and forwarded to eligible producers, who shall return them within twenty (20) days after mailing by the commission.

(e) The commission shall pay the costs of any referendum. [I.C., § 25-160, as added by 1998, ch. 205, § 4, p. 726.]

**Compiler's notes.** The enactment of this section by S.L. 1998, ch. 205, § 4, became effective September 23, 1998, upon referendum approval of the provisions of the act by

wool growers. For further details about this referendum, see the text of this section.

**Sec. to sec. ref.** This section is referred to in §§ 25-153, 25-155.

## CHAPTER 2

### INSPECTION AND SUPPRESSION OF DISEASES AMONG LIVESTOCK

#### SECTION.

- 25-201. Powers of division of animal industries — By whom exercised.
- 25-202. Administrator — Qualifications.
- 25-203. Division of animal industries — Rules and regulations.
- 25-204. Veterinarians and livestock inspectors.
- 25-205. Municipal veterinary sanitary officers.
- 25-206. Examinations by veterinarians.
- 25-207. Movement and disease control of livestock and other animals — Rules and regulations.
- 25-208. Cooperation with federal government.
- 25-209. Powers of federal officers.
- 25-210. Powers of veterinarians and inspectors.
- 25-211. Reportable diseases.
- 25-212. Reportable diseases which constitute an emergency — Rules — Duty of veterinarians and owners of livestock and other animals — Indemnity.
- 25-213. Sale of animals affected with communicable diseases.
- 25-214. Unlawful to bring infected animals into state.
- 25-214A. Stopping and inspection.
- 25-215. Tubercular animals.
- 25-216. Appraisal and compensation.
- 25-217. Tuberculosis eradication — Cooperation with federal department.

#### SECTION.

- 25-218. Diseased animals — Temporary quarantine — Notice.
- 25-219. Punishment for violation of rules and regulations.
- 25-220. [Repealed.]
- 25-221. Importation of livestock and other animals.
- 25-221A. Diversion of livestock and other animals.
- 25-222. Consent of division required for individual tests — Indemnity to owners for destroyed animals.
- 25-223. Swine — Protective rules and regulations.
- 25-224. Swine — Inspection, testing and treatment.
- 25-225. Swine — Quarantine.
- 25-225A. Swine — Pseudorabies — Herd depopulation.
- 25-226. Swine — Treatment by federal and state agents.
- 25-227. Swine — Disposal of diseased carcasses.
- 25-228. Swine — Disinfection of pens and other premises.
- 25-229. [Repealed.]
- 25-230. Penalty for violation of regulations.
- 25-231. Separability.
- 25-232. Disease and animal damage control tax levy and fees on cattle, horses, and mules.
- 25-233. Livestock disease control and T.B. indemnity fund.

## SECTION.

25-234. Feeding garbage to swine.

25-235. Enforcement.

25-236. Sale, trade, barter, exchange and importation of animals.

## SECTION.

25-237. Disposal of dead animal bodies, carcasses and body parts.

25-238 — 25-241. [Repealed.]

**25-201. Powers of division of animal industries — By whom exercised.** — The powers in this chapter conferred upon the division of animal industries (and unless otherwise apparent from the context, the word "division" hereinafter used refers to the division of animal industries) shall be exercised by the director of the department of agriculture or the administrator of the division of animal industries and such officers, employees and deputies as the administrator, with the approval of the director, may authorize, with the exception of those powers and duties pertaining to sheep, which powers and duties shall be exercised in said department by the state board of sheep commissioners. [1919, ch. 35, § 1, p. 121; C.S., § 1840; am. 1921, ch. 15, § 16, p. 14; I.C.A., § 24-201; am. 1974, ch. 18, § 101, p. 364.]

**Compiler's notes.** The subject matter of this chapter has been a fruitful source of legislation, which, until the enactment of 1905, p. 39, was confined to the inspection and sanitary regulation of sheep. R.S., §§ 1213-1222 authorized the appointment of sheep commissioners in each county, who were intrusted with the duty of inspecting bands of sheep therein. These sections were superseded by 1893, p. 79, which, however, perpetuated the same system, with additional provisions. The latter act was in turn repealed by 1895, p. 124, which inaugurated a system of state inspection, and which provided for the appointment of a state inspector and deputies. The act of 1895 was reenacted, with the exception of certain sections which had been held unconstitutional by 1899, p. 184, but was repealed by 1899, p. 352. An act of 1901, p. 142, repealed this latter act of 1899. The Act of 1905, p. 39, for the first time applied the inspection and quarantine regulations to cattle and other animals, repealed such sections of the 1901 sheep law as created the office of sheep inspector and deputy inspectors, leaving the other sections in force insofar as they were not inconsistent or in conflict with the 1905 law, and imposed the duties of sheep inspector and deputy sheep inspectors on the veterinary surgeon and his assistant, and the livestock inspectors created by the 1905 law. An act concerning diseased animals was added by 1903, p. 201, and an act on the extermination of predatory animals by 1907, p. 452. The entire law was consolidated in the Revised Codes. Subsequent to this consolidation and prior to the adoption of the Compiled Laws the legislature made many minor amendments, but usually by specific reference to the section affected. The principal

changes were in relation to the extermination of predatory animals and the funds for that purpose (C.L., § 1197 et seq.), the appointment of the state veterinary surgeon (C.L., § 1158), and the manner of raising the livestock sanitary fund (C.L., § 1205).

The legislature of 1919 repealed most of the law contained in C.L., ch. 66, and enacted in place of C.L., ch. 66, the present law herein contained (1919, ch. 35, p. 121). S.L. 1919, ch. 144, p. 438, relating to procedure for the destruction of cattle affected with tuberculosis, S.L. 1921, ch. 35, providing for cooperation of the state with the United States in the eradication of tuberculosis, S.L. 1943, ch. 139, providing for the livestock disease control and T.B. indemnity fund, and S.L. 1953, ch. 244, concerning the feeding of garbage to swine, also have been included in this chapter.

A separate law relating to sheep diseases (S.L. 1921, ch. 15) created the state board of sheep commissioners and gave said board jurisdiction over matters pertaining to sheep which were formerly exercised by the bureau of animal husbandry. This law was repealed by S.L. 1951, ch. 250, and a new board of sheep commissioners created. This law is now compiled in chapter 1.

The words enclosed in parentheses so appeared in the law as enacted.

Section 100 of S.L. 1974, ch. 18 is compiled as § 25-136.

**Sec. to sec. ref.** This chapter is referred to in §§ 25-613A, 25-3004, 25-3006, [25-3603], [25-3604], [25-3606], [25-3703], [25-3704], [25-3706].

**Collateral References.** 4 Am. Jur. 2d, Animals, §§ 32-34.

3A C.J.S., Animals, § 69.



**25-202. Administrator — Qualifications.** — The administrator of the division of animal industries in the department of agriculture shall be a competent, qualified graduate in good standing of an accredited veterinary college recognized by the United States department of agriculture and a licensed veterinarian of the state of Idaho. [1919, ch. 35, § 2, p. 121; C.S., § 1841; I.C.A., § 24-202; am. 1974, ch. 18, § 102, p. 364; am. 1993, ch. 16, § 1, p. 58.]

**Compiler's notes.** Section 2 of S.L. 1993, ch. 16 is compiled as § 25-204.

**25-203. Division of animal industries — Rules and regulations.** — The division shall be authorized and empowered to make, promulgate and enforce general and reasonable rules and regulations not inconsistent with law for the enforcement of the provisions of this chapter. A violation of such rules and regulations shall constitute a misdemeanor. [1919, ch. 35, § 2a, p. 122; C.S., § 1842; I.C.A., § 24-203; am. 1974, ch. 18, § 103, p. 364.]

**25-204. Veterinarians and livestock inspectors.** — When it shall be deemed necessary by reason of the prevalence of disease among any of the animals of this state, the division may employ deputy state veterinarians and livestock inspectors to assist in its control and eradication.

Veterinarians so employed shall be competent, qualified graduates in good standing of a veterinary college recognized by the United States department of agriculture. Each veterinarian shall receive a per diem not to exceed the reasonable value of his services and actual and necessary traveling expenses incurred in the performance of his duties, to be approved by the state veterinarian and director and paid as other like claims.

Livestock inspectors shall be competent and qualified to inspect and dip sheep for scabies, to supervise the cleaning and disinfecting of premises where any contagious, infectious or communicable disease has existed, and to perform such other duties as may be imposed by the division. They shall receive a per diem and actual and necessary traveling expenses incurred in the performance of their duties. [1919, ch. 35, § 3, p. 122; C.S., § 1843; I.C.A., § 24-204; am. 1947, ch. 42, § 1, p. 47; am. 1974, ch. 18, § 104, p. 364; am. 1985, ch. 63, § 11, p. 125; am. 1993, ch. 16, § 2, p. 58.]

**Compiler's notes.** Sections 10 and 12 of S.L. 1985, ch. 63 are compiled as §§ 25-142 and 25-2629, respectively.

Sections 1 and 3 of S.L. 1993, ch. 16 are compiled as §§ 25-202 and 25-207, respectively.

**25-205. Municipal veterinary sanitary officers.** — Whenever any municipality in the state shall have in its employ any veterinary sanitary officer engaged in the inspection of meat, milk, or animals, and the qualifications of such officer are equal to those in this chapter provided for state veterinarians, then the division may appoint such city veterinary sanitary officer a state veterinarian, but such officer shall not be entitled to claim reimbursement from the state for any services rendered or expense

incurred; and his appointment may at any time be revoked by the division. [1919, ch. 35, § 4, p. 122; C.S., § 1844; I.C.A., § 24-205; am. 1974, ch. 18, § 105, p. 364.]

**Sec. to sec. ref.** This section is referred to in § 25-2808.

**25-206. Examinations by veterinarians.** — The division shall have the authority to appoint at different points in this state, qualified veterinarians to examine any of the animals enumerated in this chapter that are to be moved to states where the sanitary laws require such examination, provided the owner requests such inspection. It shall also be the duty of the division to specify and regulate the fees charged for such examination and to remove such veterinarian whenever it may see fit: provided, that no veterinarian appointed under this section shall make any charge against the state for such service as he may render. No certificate shall be issued or no fee charged by such veterinarian unless he has himself actually examined the animals in question; failure to do so shall be considered a misdemeanor and subject to a fine of not less than twenty-five dollars (\$25.00) or more than one hundred dollars (\$100). [1919, ch. 35, § 5, p. 122; C.S., § 1845; I.C.A., § 24-206; am. 1974, ch. 18, § 106, p. 364.]

**25-207. Movement and disease control of livestock and other animals — Rules and regulations.** — The division shall have authority to make and promulgate rules and regulations for the movement and disease control of livestock and other animals into, within and out of this state as may from time to time be deemed necessary; and to compensate the state for the expense of carrying out such regulations the division may collect a reasonable fee to be by it fixed not exceeding the actual cost to the state, such fees to be deposited with the state treasurer to the credit of the livestock disease control and T.B. indemnity fund. [1919, ch. 35, § 6, p. 123; C.S., § 1846; I.C.A., § 24-207; am. 1943, ch. 139, § 1, p. 277; am. 1957, ch. 60, § 1, p. 102; am. 1974, ch. 18, § 107, p. 364; am. 1993, ch. 16, § 3, p. 58.]

**Compiler's notes.** Sections 2, 3 of S.L. 1943, ch. 139 were repealed by S.L. 1953, ch. 5, § 1.

Section 4 was repealed by S.L. 1953, ch. 63, § 5.

Section 2 of S.L. 1957, ch. 60 is compiled as § 25-210.

Section 2 of S.L. 1993, ch. 16 is compiled as § 25-204.

**Collateral References.** 4 Am. Jur. 2d, Animals, §§ 43-47.

3A C.J.S., Animals, § 74.

**25-208. Cooperation with federal government.** — The governor is hereby authorized to accept upon behalf of the state, rules and regulations prepared by the secretary of agriculture and under and in pursuance of section 3 of the Act of Congress, May 29, 1884, entitled: "An act for the establishment of the bureau of animal industry to prevent the exportation of diseased cattle and provide means for the suppression and extirpation of pleuropneumonia and other contagious diseases among domestic animals;" and the state shall cooperate with the authorities of the United States department of agriculture in the enforcement of the provisions of said act,



and of the Act of March 3, 1905, entitled: "An act to enable the secretary of agriculture to establish and maintain quarantine districts, to permit and regulate the movement of cattle and other livestock therefrom for other purposes." [1919, ch. 35, § 7, p. 123; C.S., § 1847; I.C.A., § 24-208; am. 1993, ch. 16, § 4, p. 58.]

**Compiler's notes.** The Act of Congress of May 29, 1884 may be found in 21 U.S.C. § 114. The Act of Congress of March 3, 1905

may be found in 21 U.S.C. §§ 123-127.

**Collateral References.** 4 Am. Jur. 2d, Animals, §§ 41, 42.

**25-209. Powers of federal officers.** — When the governor has requested through the United States secretary of agriculture and accepted the cooperation of the United States department of agriculture, for the purpose of controlling or eradicating any contagious, infectious or communicable disease that may exist among any of the animals of this state, and when the said United States department of agriculture, through its duly authorized officers, agents or employees, shall be thus engaged, each of such officers, agents or employees shall possess the full power and authority of a state veterinarian under and by virtue of this chapter, and the rules and regulations of the state division, but shall not be entitled to claim reimbursement from the state for services he may perform unless a mutual agreement exists for cooperative employment and joint payment. [1919, ch. 35, § 8, p. 123; C.S., § 1848; I.C.A., § 24-209; am. 1974, ch. 18, § 108, p. 364; am. 1993, ch. 16, § 5, p. 58.]

**25-210. Powers of veterinarians and inspectors.** — In order to prevent the introduction or dissemination of disease among the animals of this state, the division shall be authorized and directed to quarantine any portion of this state and it shall be unlawful to move animals from or into such quarantined area except in accordance with the rules and regulations of the division; and state veterinarians, livestock inspectors and the inspectors or agents of the United States department of agriculture/animal and plant health inspection service/veterinary services under the joint supervision of the state division and chief of the United States department of agriculture/animal and plant health inspection service/veterinary services shall be authorized and empowered to inspect, quarantine, treat, test, and condemn, appraise, slaughter and dispose of any animals affected or infected with any contagious, infectious or communicable disease, or infected with the disease of epithelioma of the eye, commonly known as "cancer eye," or that have been exposed to any such disease, and quarantine, clean and disinfect all premises where such animals have been kept, and for this purpose the said inspectors, or agents, state and federal, are hereby authorized and empowered to enter any field, feed yard, barn, stable, railroad car, stock yards, truck, airplane, or other premises in this state where animals are kept. Said inspectors or agents, state and federal, shall be empowered to call on sheriffs, constables and peace officers to assist them in the discharge of their duties and in carrying out the provisions of this chapter and of said Acts of Congress approved May 29, 1884, and the Act of March 3, 1905. Such sheriffs, constables, and other peace officers shall give

such assistance as may be requested by said inspectors in carrying out the provisions of this chapter and said Acts of Congress. The word animal or animals used in this section shall include any vertebrate member of the animal kingdom, except man; and the word disease shall include diseases of these animals. Any deer, elk, moose, bighorn sheep or bison imported or transported by the department of fish and game shall be tested for the presence of certain communicable diseases that can be transmitted to domestic livestock. Those communicable diseases to be tested for shall be arrived at by mutual agreement between the department of fish and game and the department of agriculture. [1919, ch. 35, § 9, p. 124; C.S., § 1849; I.C.A., § 24-210; am. 1953, ch. 6, § 1, p. 7; am. 1957, ch. 60, § 2, p. 102; am. 1974, ch. 18, § 109, p. 364; am. 1987, ch. 211, § 1, p. 444; am. 1991, ch. 36, § 1, p. 72; am. 1993, ch. 16, § 6, p. 58.]

**Compiler's notes.** For Acts of Congress of May 29, 1884 and March 3, 1905 see compiler's note, § 25-208.

Section 1 of S.L. 1957, ch. 60 is compiled as § 25-207.

Section 3 of S.L. 1957, ch. 60 is compiled as § 25-213.

Section 2 of S.L. 1987, ch. 211 is compiled as § 36-106.

Section 2 of S.L. 1991, ch. 36 is compiled as § 25-221.

**25-211. Reportable diseases.** — It is hereby made the duty of all persons practicing veterinary medicine in this state, all owners or operators of any laboratory making tests for the following named diseases, or owners or persons in charge of livestock or other animals, to report to the division all cases of glanders, farcy, hog cholera, tuberculosis, anthrax, rabies, dourine, scabies, pseudorabies, trichomoniasis, or brucellosis that they may find existing among animals, within this state, within forty-eight (48) hours from the date that any such case shall come to their knowledge, providing, that any such report of any of the foregoing diseases made by any practicing veterinarian, or owner or operator of any laboratory shall be made upon forms prescribed and approved by the division of animal industries of the department of agriculture of the state of Idaho, and providing that no such practicing veterinarian or owner or operator of any laboratory in this state shall make any blood tests or other official tests upon any of such animals unless they are marked with an official ear tag, other approved identification device or tattoo mark, and the number of such tag, device or mark with the name and address of the owner or owners of such animals shall be included in such report. [1919, ch. 35, § 10, p. 124; C.S., § 1850; I.C.A., § 24-211; am. 1945, ch. 110, § 1, p. 169; am. 1974, ch. 18, § 110, p. 364; am. 1979, ch. 182, § 1, p. 536; am. 1989, ch. 6, § 1, p. 7; am. 1993, ch. 16, § 7, p. 58.]

**Compiler's notes.** Section 2 of S.L. 1979, ch. 182 declared an emergency. Approved March 29, 1979.



**25-212. Reportable diseases which constitute an emergency — Rules — Duty of veterinarians and owners of livestock and other animals — Indemnity.** — The director is authorized to declare any disease, parasite or agent which has been identified by the United States department of agriculture/animal and plant health inspection service/veterinary services (USDA/APHIS/VS) as a “communicable foreign disease not known to exist in the United States” or which is not naturally occurring in or has been eradicated from Idaho and which, if introduced into Idaho, would have a devastating impact on the livestock or other animals of the state, a disease which constitutes an emergency. The director is also authorized to promulgate rules which list diseases, parasites and other agents which, if introduced into the state, would result in devastation of the livestock or other animals within the state and which diseases therefore constitute an emergency. It is hereby made the duty of all persons practicing veterinary medicine in this state to report to the division immediately, by telephone or facsimile, any and all cases of exposure to or infection of foot and mouth disease or such other disease or diseases as may be declared to constitute an emergency by state or national authorities that they may find existing among animals of the state. Every owner of livestock or other animals and every breeder or dealer in livestock or other animals and everyone bringing livestock or other animals into this state upon observing the appearance of, or symptoms of any disease or diseases, or who has knowledge of exposure of the livestock or other animals to diseases as herein set forth among the livestock or other animals owned by him or under his care, shall give immediate notice by telephone or facsimile to the division of the facts discovered by him as aforesaid, and any owner of livestock or other animals who shall fail to make report as herein provided shall forfeit all claims for indemnity for animals condemned and slaughtered or destroyed on account of any disease or diseases as herein provided for in accordance with the provisions made and promulgated by the division. In the event the director determines that animals in the state have been exposed to or are infected with a disease which constitutes an emergency or in the event of an outbreak of any disease or diseases as herein provided among any of the animals of this state the state board of examiners is authorized and empowered, upon the recommendation of the division, to reimburse the owner by cash payment or to issue or cause to be issued certificates of indebtedness having interest at such rate as shall be set by the said state board of examiners, for the purpose of reimbursing the owner of any affected or exposed animal or animals which have been condemned, appraised and slaughtered or destroyed by direction of the division, and for property destroyed and for labor employed in digging trenches and for cleaning and disinfecting premises where such infected or exposed animal or animals have been kept; provided, that the state shall only pay the difference between appraised price less federal indemnity and salvage value for any animals condemned and slaughtered or destroyed under this section and the actual costs for burial or disposal of animal carcasses and for cleaning and disinfection of premises where infected or exposed animals have been kept. In the event federal indemnity is unavailable, the state shall only pay the

difference between appraised price and salvage value. Appraisals shall be performed by a team comprised of an animal health representative, the owner and a person with experience in marketing the species of the animal condemned. The director may grant a hearing to any person, under such rules as the department may prescribe which are in compliance with chapter 52, title 67, Idaho Code, when the appraisal price is in dispute. An appeal may be taken from the decision of the director under the provisions of chapter 52, title 67, Idaho Code. [1919, ch. 35, § 11, p. 124; C.S., § 1851; I.C.A., § 24-212; am. 1947, ch. 163, § 1, p. 419; am. 1953, ch. 4, § 1, p. 6; am. 1974, ch. 18, § 111, p. 364; am. 1993, ch. 16, § 8, p. 58; am. 1997, ch. 21, § 1, p. 30.]

**Compiler's notes.** The words in parentheses so appeared in the law as enacted.

### **25-213. Sale of animals affected with communicable diseases. —**

It shall be unlawful for any person, firm or corporation, agent, or employee thereof, knowingly to sell, offer to sell, or in any manner to part with to another, any animal affected or infected with any contagious or communicable disease, or with the disease of epithelioma of the eye, commonly known as "cancer eye," except for immediate slaughter, and in accordance with the meat inspection regulations of the United States department of agriculture, or dispose of the meat, milk or other products of any animal that may be affected or infected with such contagious, infectious or communicable disease or with the disease of epithelioma of the eye, commonly known as "cancer eye," for use as food or for other purposes, except in such manner as shall be provided by the rules and regulations of the division, or to dispose of to another in any manner an animal or animals that may be in quarantine without notifying the purchaser of the existence of such quarantine, or until such time as the quarantine shall have been raised by the proper officer. [1919, ch. 35, § 12, p. 125; C.S., § 1852; I.C.A., § 24-213; am. 1957, ch. 60, § 3, p. 102; am. 1974, ch. 18, § 112, p. 364; am. 1993, ch. 16, § 9, p. 58.]

**Compiler's notes.** Section 2 of S.L. 1957, ch. 60 is compiled as § 25-210.

Section 10 of S.L. 1993, ch. 16 is compiled as § 25-214A.

**Cross ref.** Diseased meat may be seized and destroyed, §§ 37-1912, 37-1913.

#### **ANALYSIS**

Evidence.

Liability in damages.

#### **Evidence.**

In buyer's action against seller of pigs for damages for value of seven diseased pigs which died and 16 other pigs which became infected from the purchased pigs and died, conflicting and confusing testimony was sufficient evidence to justify the jury in finding that the pigs had enteritis at the time of sale

and that the defendants knew it and that six, at least, died from enteritis and that the other 16 pigs lost were infected by these six. *Daniels v. Campanello*, 75 Idaho 475, 274 P.2d 998 (1954).

#### **Liability in Damages.**

Where father gave daughter seven pigs which were not segregated from his or turned over to her until the day she sold them at a sales yard after she hauled them there in father's truck, with his knowledge, both would be liable in damages to the buyer where pigs were diseased and they both knew it, or should reasonably have known it. *Daniels v. Campanello*, 75 Idaho 475, 274 P.2d 998 (1954).

**Collateral References.** 3A C.J.S., Animals, § 78.



**25-214. Unlawful to bring infected animals into state.** — It shall be unlawful for any person, firm or corporation or its agents or employees to bring or cause to be brought in any manner whatsoever into this state any animal affected or infected with any contagious, infectious or communicable disease. [1919, ch. 35, § 13, p. 125; C.S., § 1853; I.C.A., § 24-214.]

**Collateral References.** 4 Am. Jur. 2d, Animals, § 43.  
3A C.J.S., Animals, § 82.

**25-214A. Stopping and inspection.** — All motor vehicles and trailers transporting livestock into the state of Idaho are hereby required to stop at Idaho ports of entry or checking stations established by the Idaho transportation department, and which are located on the highway upon which the livestock are being transported, and submit to inspection for compliance with the livestock entry requirements of the state of Idaho. For the purposes of this chapter, the term livestock shall include bovidae, suidae, equidae, captive cervidae, captive antilocapridae, camelidae, ratitidae, gallinaceous birds and captive waterfowl. [I.C., § 25-214A, as added by 1988, ch. 113, § 1, p. 204; am. 1993, ch. 16, § 10, p. 58.]

**Compiler's notes.** Section 9 of S.L. 1993, ch. 16 is compiled as § 25-213.

**25-215. Tubercular animals.** — The division or the inspectors of the United States department of agriculture, animal and plant health inspection service, veterinary services shall be authorized and empowered to test (in the manner prescribed) with tuberculin or any other approved tuberculosis test any animal kept, transported into or within this state or herded within this state, subject to the rules and regulations of the division, and when such animal is found by the officer making the test, to give what the division shall have prescribed by its rules and regulations to be a clearly defined reaction to such tests, the said animal shall be considered to be affected with tuberculosis. The reacting animal shall be slaughtered or destroyed and the owner indemnified in accordance with cooperative agreement between the division and the veterinary services, and in accordance with the rules and regulations of the division, and the meat inspection regulations of the United States department of agriculture. [1919, ch. 35, § 14, p. 125; C.S., § 1854; I.C.A., § 24-215; am. 1974, ch. 18, § 113, p. 364; am. 1993, ch. 16, § 11, p. 58.]

**Compiler's notes.** The words enclosed in parentheses so appeared in the law as enacted.

Section 114 of S.L. 1974, ch. 18 is compiled as § 25-218.

**Cross ref.** Permission required to make tuberculin tests and indemnification of own-

ers of condemned animals, § 25-222.

Tuberculosis free areas, § 25-301 et seq.

**Sec. to sec. ref.** This section is referred to in § 25-301.

**Collateral References.** 3A C.J.S., Animals, § 70.

**25-216. Appraisal and compensation.** — If in the opinion of the state department of agriculture or other qualified veterinarian working under its direction or under the direction of the secretary of agriculture of the United States, it shall be deemed necessary to destroy animals affected with tuberculosis, the procedure shall be as follows: each animal shall be appraised according to the plan outlined by the United States department of agriculture (B.A.I. Order 260 or any future amendments or modifications thereof) except that the appraisal value as determined by the representatives of the respective departments shall be final, and compensation shall be made out of any money in the treasury of the state of Idaho, appropriated for that purpose, on the certificate of the state department of agriculture or duly appointed deputy or assistant, filed with the state board of examiners: provided, however, that in no case shall compensation from the state of Idaho exceed twenty-five dollars (\$25.00) for any grade animal and fifty dollars (\$50.00) for any purebred animal; and, provided further, that the salvage of the animal shall first be deducted from the appraised value of the animal, and the state of Idaho shall pay up to one-third ( $\frac{1}{3}$ ) of the difference between the salvage and the appraised value, thereby adding to the sum provided by the United States department of agriculture, and leaving the remaining sum to be borne by the owner thereof; and, provided further, that no compensation shall be made for or on account of any animal destroyed, if at the time of inspection or test of such animal or at the time of destruction thereof, it shall belong to or be on the premises of any person, firm or corporation, to which it has been sold, shipped or delivered for the purpose of being slaughtered, or is being kept in violation of any law of the United States or of the state of Idaho, or any rule or regulation of the United States department of agriculture or the state department of agriculture. [1919, ch. 144, § 1, p. 438; C.S., § 1855; I.C.A., § 24-216; am. 1993, ch. 16, § 12, p. 58.]

**Cross ref.** Tests for tuberculosis, §§ 25-215, 25-222.

Tuberculosis eradication indemnity fund, § 25-401 et seq.

**Sec. to sec. ref.** This section is referred to in § 25-301 and 25-222.

**25-217. Tuberculosis eradication — Cooperation with federal department.** — The state of Idaho, through its department of agriculture, is authorized to cooperate with the United States department of agriculture in the tuberculosis eradication from all animals, except sheep, on cooperative agreement, as given in B.A.I. Order No. 263, promulgated from the provisions of the Act of Congress approved October 1, 1918, and effective October 15, 1918, entitled, "An act making appropriations for the department of agriculture for the fiscal year ending June 30, 1919"; and the department of agriculture of the state of Idaho and all representatives thereof are required to work in cooperation with the United States department of agriculture, animal and plant health inspection service, veterinary services. [1921, ch. 35, § 1, p. 45; I.C.A., § 24-217; am. 1993, ch. 16, § 13, p. 58.]



**Compiler's notes.** The Act of October 1, 1918 referred to in this section is 40 Stat., ch. 178, p. 977.

### **25-218. Diseased animals — Temporary quarantine — Notice. —**

The representatives of the department of agriculture or division of animal industries of the state of Idaho, or any inspector or agent of the United States department of agriculture, animal and plant health inspection service, veterinary services shall have authority to quarantine temporarily, where found or in any convenient place nearby, any animals affected or infected with, or exposed to, the contagion or infection of any contagious, infectious or communicable disease. The establishment of any such temporary quarantine except the quarantine of domestic sheep, shall be immediately reported to the state division of animal industries; the temporary quarantine of domestic sheep shall be reported to the board of sheep commissioners; and the state department of agriculture and state division of animal industries are hereby authorized and empowered to prescribe and enforce such rules and regulations as may be deemed necessary for the movement within the state, and the handling, method of treatment and disposition of such animals except domestic sheep, so temporarily quarantined. Such rules and regulations so made shall have the same effect as if contained in this act. Written notice of such quarantine shall be given to the owner or custodian of the quarantined animals, and it shall be unlawful to move, treat, test, dip or dispose of such animals except in accordance with said rules and regulations of said department and division. [1921, ch. 35, § 2, p. 45; I.C.A., § 24-218; am. 1974, ch. 18, § 114, p. 364; am. 1993, ch. 16, § 14, p. 58.]

**Compiler's notes.** The words "this act" refer to §§ 25-217 — 25-219.

Section 113 of S.L. 1974, ch. 18 is compiled as § 25-215.

Section 15 of S.L. 1993, ch. 16 is compiled as § 25-221.

**Collateral References.** 4 Am. Jur. 2d, Animals, § 43.

3A C.J.S., Animals, § 73.

### **25-219. Punishment for violation of rules and regulations. —**

Any person, firm or corporation violating any of the provisions of this chapter or any of the rules and regulations made and in force and effect by the department of agriculture or division of animal industries of the state of Idaho, shall be guilty of a misdemeanor, and upon conviction shall be subject to a fine of not less than one hundred dollars (\$100) nor more than five thousand dollars (\$5,000) for each offense, or by imprisonment in the county jail not exceeding six (6) months. [1921, ch. 35, § 3, p. 45; I.C.A., § 24-219; am. 1974, ch. 18, § 115, p. 364; am. 1982, ch. 21, § 1, p. 25.]

**Compiler's notes.** Section 2 of S.L. 1982, ch. 21 is compiled as § 25-221.

Section 4 of S.L. 1921, ch. 35 declared an emergency. Approved February 24, 1921.

#### **Liability in Damages.**

Where father gave daughter seven pigs

which were not segregated from his or turned over to her until the day she sold them at a sales yard after she hauled them there in father's truck, with his knowledge, both would be liable in damages to the buyer where pigs were diseased and they both knew it, or should reasonably have known. Daniels

v. Campanello, 75 Idaho 475, 274 P.2d 998 (1954).

**Collateral References.** 3A C.J.S., Animals, §§ 77-90.

## **25-220. Importation of cattle — Dairy or breeding animals. [Repealed.]**

**Compiler's notes.** This section, which § 1857; I.C.A., § 24-220, was repealed by S.L. comprised 1919, ch. 35, § 15, p. 126; C.S., 1963, ch. 131, § 1, p. 383.

**25-221. Importation of livestock and other animals.** — It shall be unlawful for any person, firm or corporation or its agents or employees to bring or cause to be brought in any manner whatsoever into this state livestock or other animals unless they are accompanied by a certificate of veterinary inspection, other approved certificate or permit, or certificate and permit showing the livestock or other animals to be free from contagious, infectious or communicable diseases or exposure thereto, the certificate or permit to be rendered in such form and manner as may be provided in the rules and regulations of the division. It shall further be unlawful to alter, change or modify an issued certificate or permit. [1919, ch. 35, § 16, p. 126; C.S., § 1858; I.C.A., § 24-221; am. 1974, ch. 18, § 116, p. 364; am. 1982, ch. 21, § 2, p. 25; am. 1991, ch. 36, § 2, p. 72; am. 1993, ch. 16, § 15, p. 58.]

**Compiler's notes.** Section 115 of S.L. 1974, ch. 18 is compiled as § 25-219.

Section 1 of S.L. 1982, ch. 21 is compiled as § 25-219.

Sections 1 and 3 of S.L. 1991, ch. 36 are

compiled as §§ 25-210 and 25-223, respectively.

Section 14 of S.L. 1993, ch. 16 is compiled as § 25-218.

**25-221A. Diversion of livestock and other animals.** — It shall be unlawful to divert livestock or other animals from destinations consigned on a certificate of veterinary inspection, other approved certificate or permit without notifying the division within seventy-two (72) hours following the diversion. When livestock or other animals are found not to be in compliance with the provisions of this chapter, the department of agriculture may order such livestock or other animals to be slaughtered, removed from the state, placed in an Idaho quarantined or approved feedlot or other approved facility. [I.C., § 25-221A, as added by 1982, ch. 21, § 3, p. 25; am. 1993, ch. 16, § 16, p. 58.]

**Cited in:** State v. Summers, 775 Idaho 768, 769 P.2d 1140 (Ct. App. 1989).

**25-222. Consent of division required for individual tests — Indemnity to owners for destroyed animals.** — It shall be unlawful for any person, except the representatives of the division, or the inspectors of the United States department of agriculture, to inject any tuberculin into any animal of the families bovidae, cervidae, antilocapridae, or camelidae or to conduct any other approved tuberculosis test on such animals in this state without first having been approved by the division to conduct such tests. All such tests shall be conducted in accordance with the rules and regulations of the division. The division shall be authorized and empowered to make and



promulgate rules and regulations for the appraising and slaughtering or destroying of animals which are deemed to be affected with tuberculosis as determined through a tuberculin or other approved tuberculosis test, and to indemnify the owners when it becomes necessary to destroy such animals in order to control or eradicate tuberculosis and to protect the public health. The indemnity is to be made in accordance with the provisions of section 25-216, Idaho Code. [1919, ch. 35, § 17, p. 127; C.S., § 1859; I.C.A., § 24-222; am. 1974, ch. 18, § 117, p. 364; am. 1993, ch. 16, § 17, p. 58.]

**Compiler's notes.** For federal act referred to in this section, see § 25-217.

Section 18 of S.L. 1993, ch. 16 is compiled as § 25-233.

**Cross ref.** Appraisal and compensation, § 25-216.

Cooperation with United States bureau of animal industry, § 25-217.

Power of bureau of animal industry to test

animals and indemnify owners, § 25-215.

Tuberculosis eradication indemnity fund, § 25-401 et seq.

Tuberculosis free areas, § 25-301 et seq.

**Sec. to sec. ref.** This section is referred to in § 25-301.

**Collateral References.** 4 Am. Jur. 2d, Animals, § 44.

3A C.J.S., Animals, § 76.

**25-223. Swine — Protective rules and regulations.** — The division shall be authorized and empowered to make and enforce such rules and regulations as shall be deemed necessary in order to cooperate with the United States department of agriculture/animal and plant health inspection service/veterinary services to prevent the introduction or dissemination of hog cholera, pseudorabies, or other contagious, infectious or communicable disease among swine or other livestock of this state. Swine shall not be imported or brought into this state for any purpose except in accordance with the said rules and regulations. Swine shall not be exhibited at any fair or exhibition, except in accordance with the said rules and regulations. Hog cholera serum or virus shall not be manufactured or sold within this state except in accordance with the said rules and regulations. [1919, ch. 35, § 27, p. 130; C.S., § 1869; I.C.A., § 24-223; am. 1974, ch. 18, § 118, p. 364; am. 1991, ch. 36, § 3, p. 72.]

**Compiler's notes.** Section 2 of S.L. 1991, ch. 36 is compiled as § 25-221.

**25-224. Swine — Inspection, testing and treatment.** — The representatives of the division or the inspectors or agents of the United States department of agriculture/animal and plant health inspection service/veterinary services shall be authorized and empowered to enter any premises where swine are or have been kept, for the purpose of inspecting, testing, treating, or disinfecting swine, or inspecting, cleaning or disinfecting such premises for the purpose of controlling or eradicating hog cholera, pseudorabies, or any other infectious, contagious or communicable disease. [1919, ch. 35, § 28, p. 130; C.S., § 1870; I.C.A., § 24-224; am. 1974, ch. 18, § 119, p. 364; am. 1991, ch. 36, § 4, p. 72.]

**25-225. Swine — Quarantine.** — The representatives of the division or the inspectors or agents of the United States department of agriculture/animal and plant health inspection service/veterinary services shall be authorized and empowered to place under quarantine any swine affected or infected with, or exposed to hog cholera, pseudorabies, or any other infectious, contagious, or communicable disease, also to quarantine any premises that may have contained any swine affected or infected with or exposed to hog cholera, pseudorabies, or other contagious, infectious or communicable disease. All quarantines shall be enforced according to the rules and regulations of the division. [1919, ch. 35, § 29, p. 130; C.S., § 1871; I.C.A., § 24-225; am. 1974, ch. 18, § 120, p. 364; am. 1991, ch. 36, § 5, p. 72.]

**Collateral References.** 4 Am. Jur. 2d, 3A C.J.S., Animals, § 73.  
Animals, § 43.

**25-225A. Swine — Pseudorabies — Herd depopulation.** — In order to prevent the introduction or dissemination of pseudorabies into or among the swine population of Idaho, the division of animal industries is granted authority to condemn pseudorabies infected herds and to require the destruction of such herds. The board of examiners is authorized and empowered upon the recommendation of the division to reimburse the owner by cash payment for pseudorabies affected or exposed animals which have been appraised and slaughtered or condemned by the direction of the division, provided that the state shall only pay the difference between appraised price less federal indemnity and salvage for any livestock slaughtered or condemned under this section. In the event federal indemnity is unavailable, the state shall only pay the difference between appraised price and salvage. Appraisals shall be performed by a team comprised of an animal health representative, the owner and a person with experience in swine marketing. However, the director or his designee may grant a hearing to any person under such rules as the department may prescribe which are in compliance with chapter 52, title 67, Idaho Code, when the appraisal price is in dispute. An appeal may be taken from the decision of the director or his designee under the provisions of chapter 52, title 67, Idaho Code. [I.C., § 25-225A, as added by 1991, ch. 36, § 6, p. 72; am. 1993, ch. 216, § 8, p. 587.]

**Compiler's notes.** Section 7 of S.L. 1991, compiled as §§ 23-1016 and 25-613A, respectively.  
ch. 36 is compiled as § 25-227.  
Sections 7 and 9 of S.L. 1993, ch. 216 are

**25-226. Swine — Treatment by federal and state agents.** — The representatives of the division or the inspectors or agents of the United States bureau of animal industry shall be authorized and empowered to treat any swine affected or infected with or exposed to hog cholera or any other contagious, infectious or communicable disease with antihog cholera serum or virus or to disinfect or otherwise treat such swine within this state in accordance with the rules and regulations of the division. [1919, ch. 35, p. 131; C.S., § 1872; I.C.A., § 24-226; am. 1974, ch. 18, § 121, p. 364.]



**25-227. Swine — Disposal of diseased carcasses.** — Any person, firm or corporation owning or having charge of any swine which have died of hog cholera, pseudorabies, or other contagious, infectious or communicable disease, shall within twenty-four (24) hours from the death of such animal, dispose of the carcass of such animal by burning or in such other manner as may be provided in the rules and regulations of the division. [1919, ch. 35, § 31, p. 131; C.S., § 1873; I.C.A., § 24-227; am. 1974, ch. 18, § 122, p. 364; am. 1991, ch. 36, § 7, p. 72.]

**Compiler's notes.** Section 6 of S.L. 1991, ch. 36 is compiled as § 25-225A.

**25-228. Swine — Disinfection of pens and other premises.** — The representatives of the division or the inspectors or agents of the United States department of agriculture/animal and plant health inspection service/veterinary services shall be authorized and empowered to clean and disinfect any premises that may have contained swine affected or infected with or exposed to hog cholera, pseudorabies, or other contagious, infectious or communicable disease. Such disinfecting shall be done at the expense of the owner and under the supervision of the division, with a disinfecting agent, approved by and used in accordance with the rules and regulations of the division. [1919, ch. 35, § 32, p. 131; C.S., § 1874; I.C.A., § 24-228; am. 1974, ch. 18, § 123, p. 364; am. 1991, ch. 36, § 8, p. 72.]

**25-229. Glanders — Tests — Destruction of affected animals. [Repealed.]**

**Compiler's notes.** This section, which comprised 1919, ch. 35, § 33, p. 131; C.S., § 1875; I.C.A., § 24-229; am. 1974, ch. 18, § 124, p. 364, was repealed by S.L. 1995, ch. 57, § 2, effective July 1, 1995.

**25-230. Penalty for violation of regulations.** — Any person, firm or corporation violating any of the provisions of this act shall be guilty of a misdemeanor, and upon conviction, shall be subject to a fine of not less than \$100, nor more than \$5000 for each offense. [1919, ch. 35, § 34, p. 132; C.S., § 1876; I.C.A., § 24-230.]

**Compiler's notes.** This section applies to §§ 25-201 — 25-215, 25-221 — 25-229.

**25-231. Separability.** — If any part or section of this chapter be decided by the courts to be unconstitutional or invalid, the same shall not affect the validity of the chapter as a whole, or any part thereof which can be given effect without the part so decided to be unconstitutional. [1919, ch. 35, § 35, p. 132; C.S., § 1877; I.C.A., § 24-231.]

**Compiler's notes.** This section applies to §§ 25-201 — 25-215, 25-230.

**Cross ref.** State predatory animal board, § 25-2501 et seq.

**25-232. Disease and animal damage control tax levy and fees on cattle, horses, and mules.** — (a) There is hereby imposed upon cattle, horses, and mules in the state of Idaho a fee of twenty-two cents (22¢) per head. Said fee shall be collected at the time of every brand inspection when a charge for brand inspection is made as required by law. Such fee when collected shall be paid by the person paying the charge for brand inspection and shall be used by the Idaho department of agriculture for livestock disease control. The state brand inspector shall collect said fees in addition to, at the same time and in the same manner as the fee collected for brand inspection. The fees so collected shall be deposited as provided in section 25-233, Idaho Code.

(b) In addition to the fee imposed in subsection (a) above, there is hereby imposed an additional fee of not to exceed five cents (5¢) per head upon the same livestock subject to the fee required in subsection (a). The amount of the additional fee shall be fixed by order of the state brand board upon the written recommendation of the Idaho cattle association. The fees collected under the provisions of this subsection (b) shall be deposited in the sheep commission account, and the board of sheep commissioners shall quarterly transmit the proper share of such moneys to the board of directors of each animal damage control district. The provisions of section 67-3525, Idaho Code, shall not apply to the payment of moneys from the sheep commission account to the animal damage control districts.

(c) The state brand inspector shall be reimbursed for the reasonable and necessary expenses incurred for the collections required in this section, in an amount determined by the administrator of the division of animal industries, a representative of the Idaho cattle association and the inspector, but the total of such expense reimbursement for the fees collected as required in subsections (a) and (b) of this section shall not exceed one and one-quarter cents (1¼¢) per head. [1943, ch. 139, § 8, p. 277; am. 1951, ch. 124, § 1, p. 292; am. 1955, ch. 46, § 1, p. 64; am. 1970, ch. 81, § 1, p. 200; am. 1974, ch. 18, § 125, p. 364; am. 1982, ch. 251, § 1, p. 642; am. 1985, ch. 37, § 1, p. 79; am. 1986, ch. 177, § 1, p. 467; am. 1989, ch. 5, § 1, p. 6; am. 1995, ch. 33, § 1, p. 51.]

**Compiler's notes.** Section 67-3525 referred to in subsection (b) of this section has been repealed.

Section 124 of S.L. 1974, ch. 18 is compiled as § 25-229.

Section 2 of S.L. 1985, ch. 37 declared an

emergency. Approved March 11, 1985.

Section 67-3525 referred to in subsection (b) of this section has been repealed.

**Sec. to sec. ref.** This section is referred to in §§ 25-1101, 25-1121 and 25-1123.

**25-233. Livestock disease control and T.B. indemnity fund.** — All moneys derived from this act shall be deposited with the state treasurer to the credit of the livestock disease control and T.B. indemnity fund, and shall be used for the purpose of payment of deputy veterinarians' salaries, travel expense and cooperating with the United States department of agriculture, animal and plant health inspection service, veterinary services in maintaining laboratories, laboratory expense, equipment and supplies and for payment of indemnities for tubercular animals slaughtered, and for other purposes deemed advisable by the administrator of the division of animal



industries providing that such expenditures shall further the betterment of the livestock industry in the state of Idaho. [1943, ch. 139, § 9, p. 277; am. 1974, ch. 18, § 126, p. 364; am. 1993, ch. 16, § 18, p. 58.]

**Compiler's notes.** Section 1 of S.L. 1943, ch. 139 is compiled as § 25-207 herein; §§ 2 and 3 were repealed by S.L. 1953, ch. 5, § 1; § 5 was repealed by S.L. 1974, ch. 18, § 1; § 6 repealed §§ 24-402, 24-502, 24-602, I.C.A.; § 7 transferred the T.B. indemnity fund, glander indemnity fund, and abortion eradication fund to the livestock disease con-

trol and T.B. indemnity fund; § 8 is compiled as § 25-232; § 10 declared an emergency.

Sections 17 and 19 of S.L. 1993, ch. 16 are compiled as §§ 25-222 and 25-236, respectively.

**Cross ref.** Cattle destroyed on account of tuberculosis, payment of compensation, § 25-402.

**25-234. Feeding garbage to swine.** — It shall be unlawful for any person to feed garbage to swine, or to deposit or receive such garbage on any premises where swine are kept, and no swine having fed on such garbage may be sold or removed from the premises.

Garbage as used in this section means putrescible animal or vegetable wastes containing animal parts, resulting from the handling, preparation, processing, cooking or consumption of food and which is collected from any source and includes animals or parts thereof as defined in section 25-3201, Idaho Code. The term shall not apply to private household wastes not removed from the premises where produced.

Any person, firm, partnership or corporation violating the provisions of this act shall, upon conviction thereof, be guilty of a misdemeanor. Each day the provisions of this act are violated shall constitute a separate offense. [I.C., § 25-234, as added by 1973, ch. 39, § 3, p. 73.]

**Compiler's notes.** Former § 25-234 which comprised S.L. 1953, ch. 244, § 1, p. 375 was repealed by S.L. 1973, ch. 39, § 2.

The words "this act" refer to S.L. 1973, ch. 39, compiled herein as §§ 25-234, 25-235.

Section 1 of S.L. 1973, ch. 39 read: "It is the

purpose of the legislature of the state of Idaho, in adopting this legislation, to assist in the prevention of the spread of contagious diseases among swine or from swine to other animals and man."

**25-235. Enforcement.** — The department of agriculture, division of animal industries of the state of Idaho, is hereby charged with the enforcement of this act, and is empowered, in conformity with the provisions of the administrative procedures act, to promulgate and adopt such reasonable rules and regulations as may be necessary to carry into effect the full intent and meaning of this act. [I.C., § 25-235, as added by 1973, ch. 39, § 4, p. 73; am. 1974, ch. 18, § 127, p. 364.]

**Compiler's notes.** Former § 25-235 which comprised S.L. 1953, ch. 244, § 2, p. 375, was repealed by S.L. 1973, ch. 39, § 2.

The words "this act" refer to S.L. 1973, ch. 39, compiled herein as §§ 25-234, 25-235.

Section 128 of S.L. 1974, ch. 18 is compiled as § 25-302.

Section 263 of S.L. 1974, ch. 18 provided the act should take effect on and after July 1, 1974.

**25-236. Sale, trade, barter, exchange and importation of animals.** — (a) No person shall possess, offer for sale, trade, barter, exchange or importation into the state of Idaho any fox, skunk or raccoon, except as provided in subsection (b) of this section.

(b) An animal specified in subsection (a) of this section may be offered for sale, trade, barter, exchange or importation into the state of Idaho for commercial fur farming without the requirement of a permit; but an animal specified in subsection (a) hereof may be offered for sale, trade, barter, exchange or importation into the state to a public park, zoo, museum or educational institution for educational, medical, scientific or exhibition purposes only if the organization possesses a permit from the department of agriculture. The department of agriculture may refuse to issue a permit if the department finds that the organization requesting the permit does not have physical facilities adequate to maintain the animal in health and safety and to prevent the escape of the animal from confinement. [I.C., § 25-236, as added by 1981, ch. 217, § 1, p. 405; am. 1993, ch. 16, § 19, p. 58.]

**Compiler's notes.** Former § 25-236, which comprised S.L. 1953, ch. 244, § 3, p. 375, was repealed by S.L. 1973, ch. 39, § 2. Section 18 of S.L. 1993, ch. 16 is compiled as § 25-233.

**25-237. Disposal of dead animal bodies, carcasses and body parts.** — (1) The administrator of the division is authorized to regulate the disposal of dead animal bodies, carcasses and body parts, and similar activities to protect public health, animals and the environment. The administrator is authorized to promulgate and enforce rules that may be necessary for the efficient administration and enforcement of this section. Such rules shall be consistent with other applicable state or federal laws or rules or regulations which relate to disposal of dead animal bodies, carcasses and body parts.

(2) Any person violating this section or rules promulgated under this section is guilty of a misdemeanor. Upon conviction, violators are subject to a fine of not less than one hundred dollars (\$100) and not more than five thousand dollars (\$5,000) for each offense, or by imprisonment in the county jail for a period not to exceed six (6) months.

(3) Any person violating this section or rules promulgated under this section may be assessed a civil penalty by the department or its agent of not more than five thousand dollars (\$5,000) for each offense. Persons against whom civil penalties are assessed are liable for reasonable attorney's fees. Civil penalties may be assessed in conjunction with any other department administrative action. Civil penalties may not be assessed unless the person charged has been given notice and opportunity for a hearing pursuant to the Idaho administrative procedure act, chapter 52, title 67, Idaho Code. If the department is unable to collect an assessed civil penalty or if any person fails to pay all or a set portion of a civil penalty as determined by the department, the department may recover such amount by action in the appropriate district court. Any person against whom the department has assessed a civil penalty under this section may, within twenty-eight (28) days of the final agency action making the assessment, seek judicial review of the assessment in accordance with the provisions of chapter 52, title 67, Idaho Code. Moneys collected for violations of this section or rules promulgated under this section shall be deposited in the state treasury and credited



to the livestock disease control and T.B. indemnity fund. If the director determines that a person has not complied with this section or the rules promulgated under this section, the director shall identify appropriate corrective actions. The director may develop a formal compliance schedule to correct deficiencies caused by noncompliance. The director may, through a formal compliance schedule, allow all or part of the value of the assessed civil penalties to apply toward correction of the deficiencies.

(4) Nothing in this section requires the director to report minor violations for prosecution when he believes that the public interest will be best served by suitable warnings or other administrative action. [I.C. § 25-237, as added by 2000, ch. 259, § 1, p. 730.]

**Compiler's notes.** Section 2 of S.L. 2000, ch. 259 declared an emergency. Approved April 12, 2000.

Former § 25-237, which comprised S.L. 1953, ch. 244, §§ 4-8, p. 375, was repealed by S.L. 1973, ch. 39, § 2.

## **25-238 — 25-241. Revocation of permits — Inspection and Investigation — Enforcement — Penalties. [Repealed.]**

**Compiler's notes.** Former §§ 25-237 through 25-241, which comprised S.L. 1953,

ch. 244, §§ 4-8, p. 375, were repealed by S.L. 1973, ch. 39, § 2.

## **CHAPTER 3**

### **TUBERCULOSIS FREE AREAS**

#### **SECTION.**

25-301. Petition of owners in area — Testing of cattle and other animals.  
25-302. Appropriation of moneys.  
25-303. Designation of free areas.  
25-304. Bringing cattle or other animals into free area.

#### **SECTION.**

25-305. Rules and regulations.  
25-306. Violation of rules and regulations.  
25-307. Quarantine when owner refuses to permit test.  
25-308. Violation of quarantine.

**25-301. Petition of owners in area — Testing of cattle and other animals.** — Whenever petitions signed by sixty percent (60%) or more of the cattle, other bovidae, captive cervidae, captive antilocapridae and camelidae owners, as designated by the last assessment rolls of the several taxing districts therein, who reside in any county, counties, or well-defined areas, which are segregated from other areas or separated from other areas by natural segregating boundary lines, such as mountain ranges, rivers or canyons, shall be presented to the department of agriculture, asking that all cattle, other bovidae, captive cervidae, captive antilocapridae and camelidae within such county, counties, or areas, be tested for tuberculosis, said department is hereby authorized to make such test in the manner prescribed in sections 25-215, 25-216, 25-222 and 25-229, Idaho Code. [1923, ch. 146, § 1, p. 214; I.C.A., § 24-301; am. 1993, ch. 15, § 1, p. 56.]

**Compiler's notes.** Section 25-229, which is referred to at the end of this section, has been repealed.

This section as enacted provided that such test be made "in the manner prescribed by

sections 1854, 1855, 1856, 1859 and 1875, Idaho Compiled Statutes, 1919." Section 1856 (compiled herein as § 25-116) has been amended to apply to scabies eradication instead of tuberculosis eradication, and is no

longer applicable. Section 25-217 herein is similar to C.S., § 1856 prior to its amendment. See *Nampa & Meridian Irrigation Dist. v. Barker*, 38 Idaho 529, 223 P. 529 (1924).

**Sec. to sec. ref.** This chapter is referred to

in §§ [25-3703] 25-3503, [25-3704] 25-3504, [25-3706] 25-3506.

**Collateral References.** 4 Am. Jur. 2d, Animals, §§ 31, 32.

3A C.J.S., Animals, § 70.

**25-302. Appropriation of moneys.** — The county commissioners of such county, counties, or areas, shall appropriate as much money as they deem necessary for the control and eradication of any infectious, contagious or communicable disease of livestock or other animals or the carrier of the cause of such disease, and such funds shall be used in cooperation with the state division or federal department of agriculture in testing animals and disposing of such diseased animals disclosed by such tests, as provided for in this act. [1923, ch. 146, § 2, p. 214; I.C.A., § 24-302; am. 1974, ch. 18, § 128, p. 364; am. 1993, ch. 15, § 2, p. 56.]

**Compiler's notes.** The words "this act" refer to S.L. 1923, ch. 146, compiled as §§ 25-301 — 25-306.

Section 127 of S.L. 1974, ch. 18 is compiled as § 25-235.

**25-303. Designation of free areas.** — When all cattle, other bovidae, captive cervidae, captive antilocapridae or camelidae in such county, counties, areas, or the entire state have been tested and the records of such test show the disease has been eradicated to a minimum of percent that the state division and federal department of agriculture in their regulations designate as free from disease, such county, counties, well-defined areas, or the entire state shall be designated as "tuberculosis free areas." [1923, ch. 146, § 3, p. 214; I.C.A., § 24-303; am. 1974, ch. 18, § 129, p. 364; am. 1993, ch. 15, § 3, p. 56.]

**25-304. Bringing cattle or other animals into free area.** — No cattle, other bovidae, captive cervidae, captive antilocapridae or camelidae shall be brought into any tuberculosis free county, counties, or areas, after the tuberculosis test provided for herein shall have been completed therein, except in compliance with regulations promulgated by the state department of agriculture, division of animal industries, in cooperation with the county commissioners. [1923, ch. 146, § 4, p. 214; I.C.A., § 24-304; am. 1974, ch. 18, § 130, p. 364; am. 1993, ch. 15, § 4, p. 56.]

**Compiler's notes.** Section 5 of S.L. 1993, ch. 15 is compiled as § 25-306.

Animals, §§ 43, 45-47.

3A C.J.S., Animals, § 70(c).

**Collateral References.** 4 Am. Jur. 2d,

**25-305. Rules and regulations.** — The state department of agriculture is hereby empowered and the division of animal industries shall be authorized to make, promulgate and enforce general and reasonable rules and regulations not inconsistent with law for the enforcement of the provisions of this chapter. [1923, ch. 146, § 5, p. 214; I.C.A., § 24-305; am. 1974, ch. 18, § 131, p. 364.]



**Compiler's notes.** The words "this chapter" refer to §§ 25-301 — 25-306.

Section 132 of S.L. 1974, ch. 18 is compiled as § 25-307.

**25-306. Violation of rules and regulations.** — Any person, firm or corporation violating any of the provisions of this act or any rules and regulations made under and pursuant to the terms of this act shall be guilty of a misdemeanor, and upon conviction, shall be subject to a fine of not less than one hundred dollars (\$100), nor more than five thousand dollars (\$5,000) for each offense. [1923, ch. 146, § 6, p. 214; I.C.A., § 24-306; am. 1993, ch. 15, § 5, p. 56.]

**Compiler's notes.** The words "this act" refer to §§ 25-301 — 25-306.

Section 7 of S.L. 1923, ch. 146 declared an emergency. Approved March 15, 1923.

Section 4 of S.L. 1993, ch. 15 is compiled as § 25-304.

**Cross ref.** Penalty for misdemeanor when not otherwise provided for, § 18-113.

**Collateral References.** 3A C.J.S., Animals, §§ 91, 92.

**25-307. Quarantine when owner refuses to permit test.** — The director of the department or administrator of the Idaho division of animal industries, or any deputy of such division, shall have the power to place any cattle, other bovidae, captive cervidae, captive antilocapridae or camelidae under quarantine when any owner or caretaker of such animals shall refuse to permit the tuberculin or other approved tuberculosis test to be applied to such animals in the manner provided in sections 25-301 through 25-306, Idaho Code. The notice of quarantine shall be in writing and any animals described therein shall not be transported or moved in any manner from the premises described in the quarantine notice. It shall be unlawful to sell, give away, offer for sale or transport any milk, milk products, or other products produced from the cattle, other bovidae, captive cervidae, captive antilocapridae or camelidae described in such notice of quarantine. Such administrator or his deputy shall furnish one (1) copy of the quarantine notice to the owner or caretaker of the cattle, other bovidae, captive cervidae, captive antilocapridae or camelidae; the original of which notice shall be placed in the hands of the sheriff of the county in which such cattle, other bovidae, captive cervidae, captive antilocapridae or camelidae are situated, and it shall be the duty of the sheriff to enforce the quarantine in accordance with such notice. The quarantine shall be removed whenever a satisfactory test has been made of the cattle, other bovidae, captive cervidae, captive antilocapridae or camelidae described in said notice. [1927, ch. 56, § 1, p. 69; I.C.A., § 24-307; am. 1974, ch. 18, § 132, p. 364; am. 1993, ch. 15, § 6, p. 56.]

**Compiler's notes.** Sections 131 and 133 of S.L. 1974, ch. 18 are compiled as §§ 25-305 and 25-401, respectively.

Section 263 of S.L. 1974, ch. 18 provided the act should take effect on and after July 1, 1974.

**Collateral References.** 4 Am. Jur. 2d, Animals, § 33.

3A C.J.S., Animals, § 73.

**25-308. Violation of quarantine.** — Any person, firm or corporation who shall violate any provisions of such quarantine shall be guilty of a misdemeanor, and upon conviction, shall be subject to a fine of not less than one hundred dollars (\$100), nor more than five thousand dollars (\$5,000) for each offense. [1927, ch. 56, § 2, p. 69; I.C.A., § 24-308; am. 1993, ch. 15, § 7, p. 56.]

**Cross ref.** Penalty for misdemeanor when not otherwise provided for, § 18-113.

CHAPTER 4

LIVESTOCK DISEASE CONTROL — TUBERCULOSIS

SECTION.

25-401. Performance of chapter.

25-402. Compensation for destroyed cattle or other animals.

SECTION.

25-403. Exceptions.

**25-401. Performance of chapter.** — The department of agriculture of the state of Idaho, through the division of animal industries, is hereby empowered to carry out all the provisions of this act. [1923, ch. 158, § 1, p. 231; I.C.A., § 24-401; am. 1974, ch. 18, § 133, p. 364.]

**Compiler's notes.** The words "this act" refer to S.L. 1923, ch. 158, compiled as §§ 25-401 — 25-403.

Section 2 of S.L. 1923, ch. 158 was repealed by S.L. 1943, ch. 139, § 6.

Section 132 of S.L. 1974, ch. 18 is compiled as § 25-307.

**Sec. to sec. ref.** This chapter is referred to in §§ [25-3703], [25-3704], [25-3706].

**25-402. Compensation for destroyed cattle or other animals.** — When cattle, other bovidae, captive cervidae, captive antilocapridae, or camelidae are destroyed on account of tuberculosis as herein provided, compensation may be paid to the owner of such animals as provided by law; and, provided further, that in no case shall the state pay more than twenty-five dollars (\$25.00) for a grade animal nor more than fifty dollars (\$50.00) for a registered purebred animal and in no case shall the indemnity paid the owner by the state exceed one-third ( $\frac{1}{3}$ ) the difference between appraised value and salvage value of the animals destroyed. [1923, ch. 158, § 3, p. 231; am. 1927, ch. 55, § 1, p. 69; am. 1929, ch. 245, § 1, p. 500; I.C.A., § 24-403; am. 1941, ch. 107, § 1, p. 190; am. 1993, ch. 14, § 1, p. 55.]

**Compiler's notes.** Section 2 of S.L. 1927, ch. 55 declared an emergency. Approved February 24, 1927.

Section 2 of S.L. 1929, ch. 245 declared an emergency. Approved March 16, 1929.

**Cross ref.** Livestock disease control and

T.B. indemnity fund, § 25-233.

Tax levy on cattle within state, § 25-232.

Tuberculosis of cattle, §§ 25-215 — 25-217.

**Collateral References.** 4 Am. Jur. 2d, Animals, § 44.

3A C.J.S., Animals, § 76.

**25-403. Exceptions.** — No payments shall be made for any cattle, other bovidae, captive cervidae, captive antilocapridae, or camelidae destroyed in the following cases:

a. If the owner does not disinfect the premises, etc., as directed by the state division or federal bureaus.

b. For any animal destroyed where the owner has not complied with all lawful quarantine regulations.

c. Animals reacting to a test not approved by the state division or federal bureaus.

d. Animals belonging to the state of Idaho or the United States government.

e. Animals brought into the state in violation of the state laws and regulations.

f. Animals which the owner, or claimant, knew to be diseased, or had notice thereof, at the time they came into their possession.

g. Animals which had the disease for which they were slaughtered, or which were destroyed by reason of exposure to the disease, at the time of their arrival in the state.

h. Animals which have not been within the state of Idaho for a period of at least one hundred and twenty (120) days prior to the discovery of the disease.

i. Where the owner has failed to submit the necessary reports as required by this act. [1923, ch. 158, § 4, p. 231; I.C.A., § 24-404; am. 1974, ch. 18, § 134, p. 364; am. 1993, ch. 14, § 2, p. 55.]

**Compiler's notes.** For words "this act" see compiler's notes, § 25-401.

Sections 133 and 135 of S.L. 1974, ch. 18 are compiled as §§ 25-401 and 25-501, respectively.

Section 5 of S.L. 1923, ch. 158 repealed acts and parts of acts in conflict therewith.

Section 263 of S.L. 1974, ch. 18 provided the act should take effect on and after July 1, 1974.

## CHAPTER 5

### GLANDERS

#### SECTION.

25-501 — 25-503. [Repealed.]

## 25-501 — 25-503. Performance — Compensation — Exceptions. [Repealed.]

**Compiler's notes.** These sections which comprised 1925, ch. 63, §§ 1, 3 and 4, p. 92; I.C.A., §§ 24-501, 24-503 and 24-504; am.

1974, ch. 18, §§ 135 — 137, p. 364 were repealed by S.L. 1995, ch. 57, § 1, effective July 1, 1995.

## CHAPTER 6

### BANG'S DISEASE

#### SECTION.

25-601. Duties of department of agriculture.

25-602. Duties of county commissioners.

#### SECTION.

25-603. Brucellosis eradication area.

25-604. Extent of eradication area — Super-



SECTION.

- vision and quarantine of premises.
- 25-605. Brucellosis tests.
- 25-606. Sale of reactors for slaughter — Payments to owners.
- 25-607. Disposal of positive reactors restricted.
- 25-608. Identification of tested animals.
- 25-609. Official brucellosis test charts — Transmission of copies to laboratories.
- 25-610. Branding of positive reactors — Revoking accreditation of veterinarians for noncompliance.
- 25-611. Laboratory tests — Where and by whom taken.

SECTION.

- 25-612. Duty of owner to have reactors slaughtered.
- 25-613. Vaccination method of control.
- 25-613A. Calfhood vaccination against brucellosis required — Penalty.
- 25-614. Indemnity payments restricted.
- 25-614A. Herd depopulation.
- 25-615. Branding and isolation of positive reactors.
- 25-616. Penalty for violations of sections 25-608 — 25-615.
- 25-617. Separability.
- 25-618. Bison — Management of diseased animals.

**25-601. Duties of department of agriculture.** — The department of agriculture (hereinafter referred to as department) is hereby authorized to cooperate with veterinary services of the United States department of agriculture (hereinafter referred to as veterinary services), for the purpose of eradication of brucellosis among cattle and other animals which shall include, but not be limited to, other bovidae, captive cervidae, captive antilocapridae, camelidae and suidae in the state of Idaho. The department shall make rules and regulations for the administration of this chapter and provide therein for the manner, method and system of testing cattle and other animals for brucellosis in cooperation with veterinary services for the eradication of said disease, and for such preventive measures as may be deemed necessary to carry out the cooperative work for the eradication of brucellosis among cattle and other animals in this state. [1939, ch. 150, § 1, p. 267; am. 1988, ch. 114, § 1, p. 205; am. 1993, ch. 13, § 1, p. 49.]

**Compiler's notes.** The words enclosed in parentheses so appeared in the law as enacted.

Section 7 of S.L. 1943, ch. 139 provided that all balances in the abortion eradication fund

should be transferred to the livestock disease control and T.B. indemnity fund.

**Sec. to sec. ref.** This chapter is referred to in §§ [25-613A], [25-3703], [25-3704], [25-3706].

**25-602. Duties of county commissioners.** — The department is hereby authorized to cooperate with veterinary services and with the boards of county commissioners of this state (hereinafter referred to as commissioners), and it is hereby made the duty of the commissioners to cooperate with said department and veterinary services for the purpose of preventing reintroduction or eradicating said disease from Idaho cattle and other animals under the provisions of this chapter and the rules and regulations of the department. [1939, ch. 150, § 2, p. 267; am. 1988, ch. 114, § 2, p. 205; am. 1993, ch. 13, § 2, p. 49.]

**Compiler's notes.** The words enclosed in parentheses so appeared in the law as enacted.

**Collateral References.** 4 Am. Jur. 2d, Animals, §§ 41-47.  
3A C.J.S., Animals, § 69.

**25-603. Brucellosis eradication area.** — The state of Idaho and its counties are engaged in the eradication of brucellosis from the cattle and other animals within this state and the movement of cattle and other animals is prohibited except in conformity with the rules and regulations of the department promulgated for the purpose of preventing the introduction of brucellosis into an Idaho county from any other county or state. Any person, firm, or corporation, who shall bring into the state or such county any cattle or other animals in violation of the rules and regulations of the department, shall upon conviction be fined not less than one hundred dollars (\$100) nor more than five thousand dollars (\$5,000) for each animal brought into such county in violation of such rules and regulations. The department shall issue permits authorizing the moving of cattle or other animals to and from and through and across such areas for exhibition, sale, or feeding purposes and for transporting or moving cattle or other animals from one (1) locality to another outside of such areas. Such permits shall be issued under such reasonable rules and regulations as may be promulgated from time to time by the department, with due regard to the convenience of the livestock owners and the protection of livestock within the areas established as herein provided for the eradication of brucellosis. [1939, ch. 150, § 3, p. 267; am. 1986, ch. 102, § 1, p. 288; am. 1988, ch. 114, § 3, p. 205; am. 1993, ch. 13, § 3, p. 49.]

**Compiler's notes.** Section 2 of S.L. 1986, ch. 102 is compiled as § 25-605.

**Sec. to sec. ref.** This section is referred to in §§ 25-607 and 25-615.

**Collateral References.** 4 Am. Jur. 2d, Animals, § 43.

3A C.J.S., Animals, §§ 73, 74.

**25-604. Extent of eradication area — Supervision and quarantine of premises.** — The area designated for the control of brucellosis may consist of the entire state, a portion of the state, entire county or part of the county, but if less than the entire county the boundary of the area shall be clearly defined in the order for the establishment of such area. When the department has established an area for the control of such disease, within a county, the commissioners of such county shall be notified and assist in the dissemination of the order and in policing the movement of livestock and other animals into and out of such area. [1939, ch. 150, § 4, p. 267; am. 1988, ch. 114, § 4, p. 205; am. 1993, ch. 13, § 4, p. 49.]

**25-605. Brucellosis tests.** — The entire state of Idaho is in the process of eradicating brucellosis in accordance with the provisions of this chapter and it shall be the duty of each owner of cattle or other animals to allow the brucellosis test to be made upon any and all cattle or other animals owned by him within the state and to pen such cattle or other animals in suitable pens and restrain them for the test whenever directed to do so in writing by the department or its representative, and each day the owner or person in charge of such cattle or other animals shall fail or refuse to allow such test, or shall fail and refuse to pen and restrain said cattle or other animals as requested by the department, shall constitute a separate offense and the owner and person in charge of said cattle or other animals shall, upon



conviction for failure to comply with such request, each be fined not less than one hundred dollars (\$100) nor more than five thousand dollars (\$5,000); provided that no owner of cattle ranging on United States forest reserve or on the public domain shall be directed to pen his cattle for a brucellosis test between the dates of April 1 and December 1 of any year. [1939, ch. 150, § 5, p. 267; am. 1941, ch. 58, § 1, p. 118; am. 1957, ch. 17, § 1, p. 20; am. 1986, ch. 102, § 2, p. 288; am. 1988, ch. 114, § 5, p. 205; am. 1993, ch. 13, § 5, p. 49.]

**Compiler's notes.** In the published acts S.L. 1941, ch. 58, § 1 states that it amends S.L. 1939, ch. 159, § 5, instead of ch. 150.

Sections 1 and 3 of S.L. 1986, ch. 102 are

compiled as §§ 25-603 and 25-613A, respectively.

Section 2 of S.L. 1957, ch. 17 declared an emergency. Approved February 7, 1957.

### **25-606. Sale of reactors for slaughter — Payments to owners. —**

The owner of cattle or other animals which have shown a positive reaction to the brucellosis test shall sell such reactors under the direction of the department at a public auction market for immediate slaughter at a public slaughtering establishment where federal or state post mortem inspection is maintained; or the department may authorize such slaughter upon the owner's property or other place under the direction of said department. After such sale and slaughter the department is authorized to pay such owner out of funds appropriated by the legislature for that purpose, an indemnity not to exceed twelve dollars and fifty cents (\$12.50) for any grade animal or more than twenty-five dollars (\$25.00) for any purebred animal. No compensation shall be made until said owner complies with the rules and regulations of the department. Appraisals and reports of salvage are not required. Proof of destruction is required. Post mortem reports will be accepted as proof of slaughter. [1939, ch. 150, § 6, p. 267; am. 1978, ch. 156, § 1, p. 344; am. 1988, ch. 114, § 6, p. 205; am. 1993, ch. 13, § 6, p. 49.]

**Compiler's notes.** Section 7 of S.L. 1988, ch. 114 is compiled as § 25-608.

**Collateral References.** 3A C.J.S., Animals, § 76(b).

**25-607. Disposal of positive reactors restricted. —** It shall be unlawful for any positive reactor to the brucellosis test, in said cooperative eradication work, to be slaughtered or to be otherwise disposed of except under the direction of the department, and any person who kills or destroys or removes the carcass of any such positive reactor without permission from the department, from the premises whereon said animal was tested, shall be fined the same as if he had violated section 25-603, Idaho Code. [1939, ch. 150, § 7, p. 267; am. 1993, ch. 13, § 7, p. 49.]

**25-608. Identification of tested animals. —** It shall be the duty of all veterinarians in the state of Idaho, at the time of taking a blood sample from any animal for the purpose of having such blood sample tested for brucellosis, to record the number of the official eartag or other official identification, if present or affix an official metal eartag bearing a number of identification on the right ear of said animal, or affix other official identification to the animal, except that in the case of registered cattle or other



animals a legible tattoo number may suffice for identification. [1939, ch. 150, § 8, p. 267; am. 1988, ch. 114, § 7, p. 205; am. 1993, ch. 13, § 8, p. 49.]

**Compiler's notes.** Sections 6 and 8 of S.L. 1988, ch. 114 are compiled as §§ 25-606 and 25-610, respectively.

**Sec. to sec. ref.** Sections 25-608 — 25-615 are referred to in § 25-616.

**25-609. Official brucellosis test charts — Transmission of copies to laboratories.** — It shall be the duty of all veterinarians to transmit to the laboratory conducting the brucellosis test on blood samples of cattle or other animals, three (3) copies of the official brucellosis test charts, showing the eartag, other official identification or tattoo number of each individual animal from which the samples were taken opposite the appropriate tube number, and designate on the chart the purpose of the test,—whether for annual, addition to tested or certified herd, local or interstate shipment. Such charts shall be transmitted at the same time the samples are transmitted to the laboratory. [1939, ch. 150, § 9, p. 267; am. 1993, ch. 13, § 9, p. 49.]

**25-610. Branding of positive reactors — Revoking accreditation of veterinarians for noncompliance.** — It shall further be the duty of each veterinarian in the state of Idaho, upon the receipt of such brucellosis test chart from the laboratory, to brand clearly or have branded in his presence with a letter "B" not less than three (3) inches high, upon the left jaw, and place an official brucellosis reactor tag in the left ear of any animals which show a positive reaction to the test in accordance with the code of federal regulation definition for a reactor. A statement that such reactors have been so branded will be made on the said chart and a copy mailed to the department within forty-eight (48) hours after receipt of said chart. A copy of any brucellosis test chart which does not show positive reactors shall also be mailed to the department within forty-eight (48) hours after receipt of said chart. Failure on the part of any veterinarian authorized by law to make blood tests, appraise reactors, vaccinate cattle or other animals, or issue quarantines shall be cause for revocation of accreditation if he fails to comply with all provisions of this law, and such veterinarian shall no longer be allowed to perform any duties for the state of Idaho until he has been reinstated. [1939, ch. 150, § 10, p. 267; am. 1988, ch. 114, § 8, p. 205; am. 1993, ch. 13, § 10, p. 49.]

**Compiler's notes.** Section 7 of S.L. 1988, ch. 114 is compiled as § 25-608.

**25-611. Laboratory tests — Where and by whom taken.** — All laboratory tests of blood samples taken from cattle or other animals in certified brucellosis-free herds, cattle or other animals in cooperative herds in process of certification, additions to certified free and process herds, and all other animals on which an official test is required, including cattle or other animals intended for interstate shipment and exhibition at livestock fairs, expositions and shows, shall be made in the laboratory of the Idaho department of agriculture and such blood samples for official test may only

be taken by persons approved by the department and the United States department of agriculture, veterinary services. [1939, ch. 150, § 11, p. 267; am. 1988, ch. 114, § 9, p. 205; am. 1993, ch. 13, § 11, p. 49.]

**25-612. Duty of owner to have reactors slaughtered.** — It shall be the duty of the owner of any cattle or other animals which have been officially classified as reactors to the brucellosis disease test in accordance with the provisions of this chapter, after receiving a written order and permit to move such animals for immediate slaughter, to move such animals or cause the same to be moved to the point designated in the order and permit, and to cause such animals to be slaughtered in accordance with the provisions of this chapter not later than fifteen (15) days from the date the test was made. [1939, ch. 150, § 12, p. 267; am. 1988, ch. 114, § 10, p. 205; am. 1993, ch. 13, § 12, p. 49.]

**25-613. Vaccination method of control.** — The owner of any cattle who desires to have such cattle vaccinated for protection against brucellosis shall have such cattle vaccinated by a veterinarian who is licensed and accredited in the state of Idaho. Except in the case of vaccination of adult cattle which vaccination shall be performed only under the direct supervision of state or federal regulatory personnel. No person, firm, or corporation shall sell, give away, or in any manner place in the hands of any owner or caretaker of cattle any brucellosis vaccine, and only licensed and accredited veterinarians may inject brucellosis vaccine into any cattle. [1939, ch. 150, § 13, p. 267; am. 1988, ch. 114, § 11, p. 205; am. 1993, ch. 13, § 13, p. 49.]

**Compiler's notes.** Section 14 of S.L. 1993, ch. 13 is compiled as § 25-614.

**25-613A. Calfhood vaccination against brucellosis required — Penalty.** — All female cattle born after July 1, 1983, shall be officially calfhood vaccinated. "Officially calfhood vaccinated" shall mean a bovine female animal vaccinated against Brucellosis under the supervision of a federal or state veterinary official with age limits prescribed by the department in compliance with United States department of agriculture recommended uniform methods and rules, with a vaccine approved by the department, and permanently identified as such a vaccinate and reported at the time of vaccination to the department or appropriate federal agency cooperating in the eradication of Brucellosis. However, the director of the department or his designee may grant a hearing to any persons, under such rules as the department may prescribe which are in compliance with chapter 52, title 67, Idaho Code, as to whether an exception should be made to the provisions of this section. An appeal may be taken from the decision of the director or his designee under the provisions of chapter 52, title 67, Idaho Code. Any person who shall possess or own in this state or acquire within this state any cattle contrary to the provisions of this section shall be guilty of a misdemeanor and shall be punished according to the provisions of section 25-616, Idaho Code. The department also may order that when animals are found not to be in compliance with the provisions of chapter 2, title 25, Idaho Code, and chapter 6, title 25, Idaho Code, that they be



slaughtered, removed from the state, or placed in an Idaho registered quarantine feed lot. [I.C., § 25-613A, as added by 1980, ch. 148, § 1, p. 316; am. 1983, ch. 95, § 1, p. 208; am. 1986, ch. 102, § 3, p. 288; am. 1993, ch. 216, § 9, p. 587.]

**Compiler's notes.** Section 2 of S.L. 1980, ch. 148 is compiled as § 25-616.

Sections 2 and 4 of S.L. 1986, ch. 102 are compiled as §§ 25-605 and 25-616.

Sections 8 and 10 of S.L. 1993, ch. 216 are compiled as §§ 25-225A and 25-614A, respectively.

**25-614. Indemnity payments restricted.** — No indemnity shall be paid to any owner of cattle or other animals for any positive reacting cattle or other animals unless such cattle or other animals are native Idaho cattle or other animals or have been imported in compliance with existing Idaho rules and regulations. [1939, ch. 150, § 14, p. 267; am. 1988, ch. 114, § 12, p. 205; am. 1993, ch. 13, § 14, p. 49.]

**Compiler's notes.** For words "this act" see compiler's notes, § 25-601.

Section 13 of S.L. 1993, ch. 13 is compiled as § 25-613.

**25-614A. Herd depopulation.** — In order to facilitate the advancement of the state of Idaho to brucellosis class free and to maintain the state in this category, the division of animal industries is granted authority to condemn brucellosis infected herds and to require the destruction of such infected herds. The board of examiners is authorized and empowered upon the recommendation of the division, to reimburse the owner by cash payment for brucellosis affected or exposed animals which have been appraised and slaughtered by direction of the division, provided that the state shall only pay the difference between appraised price less federal indemnity and salvage for any cattle or other animals slaughtered under the provisions of this section. Appraisals shall be performed by a team made up of an animal health representative, the owner and a person with experience in marketing cattle or other animals. However, the director or his designee may grant a hearing to any person under such rules as the department may prescribe which are in compliance with chapter 52, title 67, Idaho Code, when appraisal price is in dispute. An appeal may be taken from the decision of the director or his designee under the provisions of chapter 52, title 67, Idaho Code. [I.C., § 25-614A, as added by 1988, ch. 114, § 13, p. 205; am. 1993, ch. 13, § 15, p. 49; am. 1993, ch. 216, § 10, p. 587.]

**Compiler's notes.** This section was amended by two 1993 acts — ch. 13, § 15, and ch. 216, § 10, both effective July 1, 1993 — which do not appear to conflict and have been compiled together.

The amendment by ch. 13, § 15, substituted "brucellosis" for "Brucellosis" throughout this section; in the second sentence substituted "cattle or other animals" for "livestock" preceding "slaughtered under"; added "the provisions of" preceding "this section."; in the third sentence deleted "cattle" preceding "marketing"; at the end of the third

sentence added "cattle or other animals"; and near the end of the last sentence substituted "chapter 52, title 67" for "section 67-5215" preceding "Idaho Code."

The amendment by ch. 216, § 10, in the fourth sentence deleted "and regulations" preceding "as the department may"; and near the end of the last sentence substituted "chapter 52, title 67" for "section 67-5215" preceding "Idaho Code."

Section 14 of S.L. 1988, ch. 114 is compiled as § 25-616.

Sections 9 and 11 of S.L. 1993, ch. 216 are



compiled as §§ 25-613A and 26-1809, respectively.

**25-615. Branding and isolation of positive reactors.** — All cattle or other animals showing a positive reaction to the brucellosis test in the cooperative work, whether in individual herds or in cooperative areas, shall immediately after being branded in accordance with the provisions of this chapter, be isolated from all other brucellosis susceptible animals until such time as they are moved under permit issued by the department as provided in section 25-603, Idaho Code. [1939, ch. 150, § 15, p. 267; am. 1993, ch. 13, § 16, p. 49.]

**25-616. Penalty for violations of sections 25-608 — 25-615.** — Any person, firm, or corporation who shall fail to do or perform, or who shall not permit another to do or perform, any act which he or it is required to do or perform under sections 25-608 through 25-615, Idaho Code, inclusive, or any of them, or who shall in any manner interfere with the compliance of said sections or any of them or any provisions thereof by any officer or representative of the department, veterinary services or commissioners, or who shall refuse to present or restrain any cattle or other animals for the purpose of branding under this act, or who shall remove any eartag from any brucellosis reactor, or who shall remove the eartag from any animal tested, identified or vaccinated for brucellosis and place such tag on or in the ear of another animal, or place a vaccination tag in the ear of an unvaccinated animal, shall, upon conviction thereof, be fined not less than one hundred dollars (\$100) nor more than five thousand dollars (\$5,000) for each offense. For the purposes of this section, a person shall be charged with a separate offense for each animal he owns or possesses and which is found not to be in compliance with the provisions of sections 25-608 through 25-615, Idaho Code, or any of them. [1939, ch. 150, § 16, p. 267; am. 1980, ch. 148, § 2, p. 316; am. 1986, ch. 102, § 4, p. 288; am. 1988, ch. 114, § 14, p. 205; am. 1993, ch. 13, § 17, p. 49.]

**Compiler's notes.** Section 1 of S.L. 1980, ch. 148 is compiled as § 25-613A.

Section 3 of S.L. 1986, ch. 102 is compiled as § 25-613A.

Section 13 of S.L. 1988, ch. 114 is compiled as § 25-614A.

**Sec. to sec. ref.** This section is referred to in § 25-613A.

**Collateral References.** 3A C.J.S., Animals, §§ 91, 92.

**25-617. Separability.** — If any provision of this act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable. [1939, ch. 150, § 17, p. 267.]

**Compiler's notes.** The words "this act" refer to S.L. 1939, ch. 150, compiled as §§ 25-601 — 25-617.

**25-618. Bison — Management of diseased animals.** — (1) The legislature finds that significant potential exists for the spread of contagious disease to persons, livestock and other animals in Idaho, and in particular, the spread of brucellosis to livestock, elk, moose and other susceptible animals from bison emigrating into Idaho from Yellowstone national park and its environs. It is the purpose of the provisions of this section to provide for the management or eradication of bison which have not been reduced to captivity and which pose a threat to persons, livestock or other animals through the transmission of contagious disease, and to prescribe the duties of the department of agriculture with respect thereto.

(2) When estrayed or migratory bison exposed to or affected with brucellosis or other communicable disease determined by the department to pose a significant threat to persons, livestock or other animals, enter into or are otherwise present within the state of Idaho, one (1) of the following actions will be taken by the department:

(a) The live bison may be physically removed by the safest and most expeditious means from within the state boundaries. This means may include, but is not limited to, capture, trucking, hazing/aversion or delivery to a slaughterhouse approved by the department. This shall constitute the action of choice if at all feasible.

(b) If live bison cannot safely or by reasonable and permanent means be removed from the state as provided in paragraph (a) of this subsection, they may be destroyed where they stand by the use of firearms. If firearms cannot be used with due regard for human safety and public and private property, the bison shall be relocated to a danger free area and destroyed by any practicable means of euthanasia, including the use of firearms.

(c) When bison of necessity or unintentionally are killed through actions of the department, the carcass remains will be disposed of by the most economical means possible. This may include but is not limited to burying, incineration, rendering or field dressing for delivery to a departmentally approved slaughterhouse or slaughter destination.

(3) The department shall promulgate such rules and regulations pursuant to chapter 52, title 67, Idaho Code, as it deems necessary to implement the provisions of this section.

(4) Upon the request of the department of agriculture, the department of fish and game shall cooperate with and assist the department of agriculture in accomplishing the requirements of this section. [I.C., § 25-618, as added by 1992; ch. 271, § 1, p. 842.]

## CHAPTER 7

### REGULATION OF SIRES

#### SECTION.

25-701 — 25-721. [Repealed.]



**25-701 — 25-721. Regulation of sires. [Repealed.]**

**Compiler's notes.** These sections were repealed by S.L. 1953, ch. 5, § 1, p. 7:

Sections 25-701 — 25-719 were comprised of S.L. 1909, p. 211, §§ 1-10, 13; modified by R.C., § 6311; compiled and reen. C.L. 67:1-67:19; C.S. §§ 1887-1905; I.C.A., §§ 24-701 — 24-719; am. 1933, ch. 47, § 2, p. 75; am. 1943, ch. 139, §§ 2, 3, p. 277.

Section 25-720 was comprised of S.L. 1905, p. 232, § 1; reen. R.C., § 3451; am. 1909, p. 211, § 4; am. 1913, ch. 174, part of § 1, p. 550; compiled and reen. C.L. 67:20; C.S., § 1906; I.C.A., § 720.

Section 25-721 was comprised of S.L. 1913, ch. 174, part of § 1, p. 550; compiled and reen. C.L. 67:21; C.S., § 1907; I.C.A., § 24-721.

**CHAPTER 8****ARTIFICIAL INSEMINATION OF DOMESTIC ANIMALS — LICENSE TO PRACTICE****SECTION.**

25-801. Scope of act.

25-802. Definition.

25-803. License required.

25-804. Division of animal industries — Powers and duties.

25-805. Prerequisite qualifications of applicants for license.

25-806. Application for license.

25-807. Fees.

**SECTION.**

25-808. Examinations.

25-809. Licenses — Issuance, renewals and reinstatement.

25-810. Refusal, revocation or suspension of license.

25-811. Register.

25-812. Records of practitioners — Inspection by division.

25-813. Unlawful practice a misdemeanor.

**25-801. Scope of act.** — The practice of artificial insemination of domestic animals in the state of Idaho is subject to the regulations prescribed in this act. Nothing herein shall be held to apply to, interfere with or prohibit the activities of duly licensed veterinarians, or to permit persons licensed under this act to use or prescribe medicine, including chemical drugs, perform surgical operations or practice obstetrics. [1945, ch. 180, § 1, p. 274.]

**Compiler's notes.** The words "this act" refer to S.L. 1945, ch. 180, compiled as §§ 25-801 — 25-813.

**Sec. to sec. ref.** This section is referred to in § 54-2104.

**25-802. Definition.** — Artificial insemination as used in this act shall for the purposes herein mean the fertilization of or the attempt to fertilize the female domestic animal by placing and implanting by artificial means in the vagina of the female domestic animal the seminal fluid obtained from the male animal. [1945, ch. 180, § 2, p. 274.]

**Compiler's notes.** For words "this act" see compiler's notes, § 25-801.

**25-803. License required.** — It is unlawful for any person to practice artificial insemination of domestic animals unless he shall first obtain a license so to do as provided in this act. Provided, no license shall be required of or by any person to perform artificial insemination upon his own domestic animals. [1945, ch. 180, § 3, p. 274.]

**Compiler's notes.** For words "this act" see compiler's notes, § 25-801.



**25-804. Division of animal industries — Powers and duties. —** This act shall be administered by the division of animal industries and in addition to any powers now conferred by law shall have the following powers and duties:

a. To conduct examinations to ascertain the qualifications and fitness of applicants to practice artificial insemination in the state of Idaho.

b. To prescribe rules and regulations for a fair and wholly impartial examination of candidates to practice artificial insemination.

c. To prescribe rules and regulations defining a course on artificial insemination and sanitation and to determine the sufficiency of any such course for the purpose of qualifying persons to be licensed under this act.

d. To conduct hearings on proceedings to revoke licenses of persons practicing under this act and to revoke such licenses for due cause, or upon such hearing to refuse a renewal of license to any person practicing artificial insemination for due cause.

e. To formulate such rules and regulations not contrary to the provisions of this act when required as may be necessary for the proper administration of this act. [1945, ch. 180, § 4, p. 274; am. 1974, ch. 18, § 138, p. 364.]

**Compiler's notes.** For words "this act" see compiler's notes, § 25-801.

Section 137 of S.L. 1974, ch. 18 is compiled as § 25-503.

**25-805. Prerequisite qualifications of applicants for license. —** Every applicant for a license to practice artificial insemination as in this act defined shall be a person of good moral character and a graduate of a course on artificial insemination and sanitation, or of an equivalent course, as defined and approved by the division of animal industries. [1945, ch. 180, § 5, p. 274; am. 1974, ch. 18, § 139, p. 364.]

**Compiler's notes.** For words "this act" see compiler's notes, § 25-801.

**25-806. Application for license. —** Application for a license shall be made in writing by the applicant under oath at such time, in such form and accompanied by such proof of applicant's fitness to practice as the division of animal industries of the state of Idaho may from time to time prescribe. [1945, ch. 180, § 6, p. 274; am. 1974, ch. 18, § 140, p. 364.]

**25-807. Fees. —** The division of animal industries of the state of Idaho is authorized to charge every applicant for a license a fee of twenty-five dollars (\$25.00) which shall accompany the application. A license shall be issued to each successful applicant without the payment of an additional fee. The request of each person so licensed for an annual renewal license shall be accompanied by a fee of five dollars (\$5.00).

All receipts from the above mentioned license payments shall be placed in the livestock disease control fund. [1945, ch. 180, § 7, p. 274; am. 1947, ch. 6, § 1, p. 7; am. 1974, ch. 18, § 141, p. 364; am. 1984, ch. 17, § 1, p. 19.]

**Compiler's notes.** Section 2 of S.L. 1984, ch. 17 is compiled as § 25-809.

**25-808. Examinations.** — Each applicant shall be examined in writing by the division of animal industries. Such written examination shall be given to determine the knowledge of such applicant of the practice of artificial insemination. Such examination shall consist of such questions and cover such phases of the practice as may be prescribed from time to time by the said division of animal industries.

No applicant shall be granted a license who shall fail to answer correctly seventy-five percent (75%) of all questions asked.

In addition to such written examination, the applicant shall be examined in the art and skill of artificial insemination in such manner and by such methods as shall reveal applicant's ability to practice artificial insemination.

Should an applicant who is required to procure a license as a prerequisite for engaging in the practice of artificial insemination fail to pass the required examination, the applicant may be reexamined at any regular or special examination thereafter upon the payment of ten dollars (\$10.00) reexamination fee. [1945, ch. 180, § 8, p. 274; am. 1974, ch. 18, § 142, p. 364.]

**25-809. Licenses — Issuance, renewals and reinstatement.** — If the applicant shall pass such examination as is herein provided to be given and shall show that he is a person of good moral character and that he possesses the qualifications required by this act to entitle him to a license to practice artificial insemination, he shall be entitled to a license authorizing him to practice such artificial insemination within the state of Idaho.

All such licenses shall expire on the 30th day of June of each year, and all persons who practice artificial insemination within the meaning of this act are entitled to renew and shall renew their licenses on or before the 1st day of July of each year, and shall make application for such renewal to the division of animal industries. In case of failure so to renew a license, the division shall cancel the same on the 1st day of October, following the date of delinquency: provided, however, that the division may reinstate any license canceled for failure to renew the same on payment of twenty-five dollars (\$25.00). Provided, further, that where a license has been canceled for a period of more than five (5) years, the person so affected shall be required to make application to the division, using the same forms and furnishing the same information as required of a person originally applying for a license, and pay the same fee that is required of a person taking the examination for the first time. Such applicant for reinstatement whose license has been canceled for a period of more than five (5) years shall appear in person before the division at any regular or special meeting for an examination the nature of which shall be determined by the division. If after such examination the division is of the opinion that the person examined is the bona fide holder of a canceled license, is of good moral character and, if found capable of again practicing artificial insemination, the license shall be reinstated and the holder thereof entitled to practice subject to the laws of this state. [1945, ch. 180, § 9, p. 274; am. 1974, ch. 18, § 143, p. 364; am. 1984, ch. 17, § 2, p. 19.]



**Compiler's notes.** Section 1 of S.L. 1984, ch. 17 is compiled as § 25-807.

**25-810. Refusal, revocation or suspension of license.** — The division of animal industries may either refuse to issue, or refuse to review, or suspend or revoke any license upon any of the following grounds:

- a. Fraud or deception in procuring the license.
- b. The publication or use of any untruthful or improper statements or representations with the view of deceiving or defrauding the public or any client or customer in connection with the practice of artificial insemination.
- c. The conviction of a felony as shown by a certified copy of the record of the court of conviction.
- d. Habitual intemperance in the use of intoxicating liquors, or habitual addiction to the use of morphine, cocaine, or other habit forming drugs.
- e. Immoral, unprofessional or dishonorable conduct manifestly disqualifying the licensee for practicing artificial insemination.
- f. Gross malpractice.
- g. Continued practice by a person knowingly having an infectious or contagious disease communicable to domestic animals.

The division may neither refuse to issue, nor refuse to renew, nor suspend nor revoke any license, however, for any such cause, unless the person accused has been given at least twenty (20) days notice in writing of the charge against him, and a public hearing by the division is first had.

Upon the hearing of any such proceeding the administrator may administer oaths and may procure, by subpoena of the division of animal industries, the attendance of witnesses and the production of relevant books and papers.

Any district court, or any judge of a district court, either in terms or in vacation, upon the application of the division may, by order duly entered require the attendance of witnesses and the production of relevant books and papers before the said division in any hearing relating to the refusal, suspension or revocation of license hereunder. Upon refusal or neglect to obey the order of the court or the said judge, the court or judge may compel, by proceedings for contempt of court, obedience of its or his order. [1945, ch. 180, § 10, p. 274; a.m. 1974, ch. 18, § 144, p. 364.]

**25-811. Register.** — The division of animal industries shall keep on file a register of all applicants for licenses, rejected applicants and persons licensed to practice under this act. [1945, ch. 180, § 11, p. 274; am. 1974, ch. 18, § 145, p. 364.]

**Compiler's notes.** For words "this act" see compiler's note, § 25-801.

**25-812. Records of practitioners — Inspection by division.** — Every person practicing artificial insemination as herein defined in the state of Idaho must make and keep a record showing each artificial insemination performed by him, the date thereof, the owner of the animal so inseminated, and the source of the semen used by him for such purpose. Such records



shall at all times be open to the division for examination and inspection and in addition thereto the method and procedure used by any person in the practice of artificial insemination under this act may be examined, inspected and investigated by the division at any time. [1945, ch. 180, § 12, p. 274; am. 1974, ch. 18, § 146, p. 364.]

**Compiler's notes.** For words "this act" see compiler's notes, § 25-801.  
Section 147 of S.L. 1974, ch. 18 is compiled as § 25-1721.

Section 263 of S.L. 1974, ch. 18 provided the act should take effect on and after July 1, 1974.

**25-813. Unlawful practice a misdemeanor.** — Any person who practices or attempts to practice artificial insemination, who publicly advertises for the purpose of practicing artificial insemination, or who uses any word or designation, title, or abbreviation calculated to induce belief that he is qualified to practice artificial insemination, without a license as provided in this act, is guilty of a misdemeanor. [1945, ch. 180, § 13, p. 274.]

**Compiler's notes.** For words "this act" see compiler's notes, § 25-801.

**Cross ref.** Penalty for misdemeanor when not otherwise provided, § 18-113.

CHAPTER 9

TAYLOR GRAZING ACT PREFERENCES

SECTION.

25-901. Grazing preference appurtenant to base property.  
25-902. Continuing right to grazing preference.

SECTION.

25-903. Interference with grazing right.

**25-901. Grazing preference appurtenant to base property.** — The United States congress, in fulfilling the constitutional obligation to manage the property of the United States, passed the Taylor grazing act in 1934. Through this act, congress acknowledged grazing preference rights and provided for adjudication of allotments on which the grazing preference right was exercised. Livestock ranches are bought, sold, traded and inherited with assurance that the appurtenant grazing preference rights will be transferred to the new base property owner. Therefore, a grazing preference right shall be considered an appurtenance of the base property through which the grazing preference is maintained. [I.C., § 25-901, as added by 1998, ch. 345, § 1, p. 1095.]

**Compiler's notes.** Former chapter 9 which comprised 1875, p. 110, §§ 1-3; am. R.S., §§ 1210-1212; reen. R.C. & C.L., §§ 1217-1219; C.S., §§ 1908-1910; I.C.A., §§ 24-801 — 24-803, was repealed by S.L. 1982, ch. 31, § 1.

The Taylor Grazing Act of 1931, which is referred to above, is codified at 43 U.S.C. 315 et seq.

**25-902. Continuing right to grazing preference.** — When a grazing preference right is made use of through sale, rental or other equitable distribution of base property to another person with the view of receiving benefit of grazing under the appurtenant preference right, such person, his heirs, executors, administrators, successors or assigns, shall not thereafter, without his consent, be deprived of the same without just compensation. [I.C., § 25-902, as added by 1998, ch. 345, § 1, p. 1095.]

**Compiler's notes.** Former § 25-902 was repealed. See Compiler's note, § 25-901.

**25-903. Interference with grazing right.** — Any person who willfully or negligently interferes with the legal herding, grazing or pasturing of livestock or with a fence, gate, water development or other range improvement on private base property or on an adjudicated allotment is guilty of a misdemeanor and additionally shall be subject to restitution under section 19-5304, Idaho Code. [I.C., § 25-903, as added by 1998, ch. 345, § 1, p. 1095.]

**Compiler's notes.** Former § 25-903 was repealed. See Compiler's note, § 25-901.

## CHAPTER 10

### LIABILITIES OF STOCK RANCHERS

#### SECTION.

25-1001. Stock rancher defined.

25-1002. Duties and liability.

25-1003. Forfeiture of fees.

25-1004. Stock rancher ranging stock on

lands of another a misdemeanor — Prima facie evidence.

**25-1001. Stock rancher defined.** — Every person who, for a consideration, takes horses or other stock to keep and take care of by the day, week, month or year, is deemed a stock rancher. [1872, p. 58, § 1; am. R.S., § 1230; reen. R.C. & C.L., § 1221; C.S., § 1914; I.C.A., § 24-901.]

**25-1002. Duties and liability.** — It is the duty of every stock rancher to use due diligence to prevent the death or loss of, or injury to, any animal in his charge as such rancher; and in case of death, loss or injury to such animal while in possession of a stock rancher, the owner thereof may recover, before any court of competent jurisdiction, the full amount of damages sustained, if it appears that such loss, death or injury was in consequence of the failure of the stock rancher to use due and reasonable diligence. [1872, p. 58, § 2; am. R.S., § 1231; reen. R.C. & C.L., § 1222; C.S., § 1915; I.C.A., § 24-902.]

**25-1003. Forfeiture of fees.** — Any stock rancher using any animal placed in his charge, by riding or working the same in any manner whatever, unless there is an express contract between himself and the owner thereof allowing such animal to be used, forfeits all claims or demands for ranch fees on such animal; and he is liable for any damages or injury to such

animal by reason of such use. [1872, p. 58, § 3; am. R.S., § 1232; reen. R.C. & C.L., § 1223; C.S., § 1916; I.C.A., § 24-903.]

**25-1004. Stock rancher ranging stock on lands of another a misdemeanor — Prima facie evidence.** — It shall constitute a misdemeanor for any stock rancher, as defined in this act, having charge of horses or other stock to herd, move, drive, or range the same or permit or suffer them to be herded, moved, driven, or ranged on the land or possessory claims of another person. Proof that such stock rancher did herd, move, or range such stock on such land or possessory rights is prima facie evidence of guilt, unless the evidence produced on the trial shows that the accused acted diligently and in good faith and with an innocent purpose to prevent such trespassing. [I.C.A., § 24-904, as added by 1941, ch. 61, § 1, p. 122.]

**Compiler's notes.** The words "this act" refer to §§ 25-1001 — 25-1004.

**Cross ref.** Penalty for misdemeanor when not otherwise provided, § 18-113.

## CHAPTER 11

### STATE BRAND BOARD

#### SECTION.

- 25-1101. Definitions.
- 25-1102. Board created — Membership and organization.
- 25-1103. State brand inspector — Appointment, salary, bond.
- 25-1104. Officer, deputies and assistants.
- 25-1105. Ex officio brand inspectors.
- 25-1106. Duties of inspector and deputies as law-enforcement officers.
- 25-1106A. [Amended and Redesignated.]
- 25-1107. Duties of inspector.
- 25-1108. Office of board.
- 25-1109. Board to audit claims and make annual report.
- 25-1110. Brand board to make rules and regulations.
- 25-1111, 25-1112. [Amended and Redesignated.]
- 25-1112. [Amended and Redesignated.]
- 25-1113 — 25-1115. [Repealed.]
- 25-1116. [Amended and Redesignated.]
- 25-1117. [Repealed.]
- 25-1118, 25-1119. [Reserved.]
- 25-1120. Brand inspection.
- 25-1121. Requirements for brand inspection — Written permit in lieu of inspection.
- 25-1122. Ownership and transportation certificate.
- 25-1123. Exemption from brand requirement and inspection.
- 25-1124. Certificate or permit to be produced upon demand.
- 25-1125. Inspection of livestock in transit — Impounding when certificate or permit erroneous.
- 25-1126. Owner of recorded brand — Right to

#### SECTION.

- cause inspection of livestock in transit.
- 25-1127 — 25-1139. [Reserved.]
- 25-1140. Use of brands restricted.
- 25-1141. Requirements for branding irons.
- 25-1142. Sheep owners to use brands — Use of earmarks — Use of nose brands and tattoo brands — Unrecorded brands.
- 25-1143. Brands to be recorded.
- 25-1144. Manner of recording brands.
- 25-1145. Renewal of brands.
- 25-1146. Sales and transfers of brands.
- 25-1147. Conflicting brands.
- 25-1148. Brand book.
- 25-1149. Disposition of recording fees.
- 25-1150. Brand recordings open to public — Evidence.
- 25-1151. Deceptive and infringing brands — Prevention of use.
- 25-1152 — 25-1159. [Reserved.]
- 25-1160. Brand inspection fees.
- 25-1161. Fees — State brand account.
- 25-1162 — 25-1169. [Reserved.]
- 25-1170. Reciprocity.
- 25-1171. Impoundment of vehicles used in transporting stolen livestock.
- 25-1172. Impoundment of livestock if no satisfactory evidence of ownership.
- 25-1173. Unclaimed livestock proceeds account.
- 25-1174. Hearing for claims to livestock proceeds account.
- 25-1175 — 25-1179. [Reserved.]
- 25-1180. Mutilating and counterfeiting brands a misdemeanor.
- 25-1181. Penalties.



## SECTION.

25-1182. Issuance of citations and arrest of violators.

**25-1101. Definitions.** — As used in this chapter, and elsewhere in the Idaho Code where applicable:

“Livestock” means any cattle, horses, mules or asses.

“Transportation” means the movement of livestock in any manner.

“Person” means every natural person, firm, association, partnership, company business or corporation.

“Brand” means one, either, or both of the following:

(1) An identification mark, device or document prescribed by rules of the board that cannot be switched from one (1) animal to another without destruction or disfigurement of the mark, device or document. Any such mark or device, except for the location in or on the animal, shall be subject to the same restrictions, requirements, inspections, fees and penalties as the permanent identification marks described in the following paragraph (2).

(2) An identification mark that is permanently affixed into the hide of a live animal on either side in any one of three (3) locations, the shoulder, ribs, or hip. The brand may be applied on the hide by either a hot iron, or as a freeze brand which involves applying intense cold to the skin of the live animal to change the color of the hair on the skin to create a clear brand. An acid brand means any such mark or brand that has been applied by the use of a chemical compound and when so used causes a scarlike tissue to form on the hide of a live animal. Acid brands are not valid for any type of brand inspection.

“Brand inspector” means the state brand inspector, any authorized deputy or assistant brand inspector, or any other person authorized by the laws of the state of Idaho to make brand inspections.

“Brand inspection certificate” means a certificate on a form adopted by the state brand board, listing the animals for which the certificate is issued, describing the animals listed thereon, listing the name and address of the owner of the livestock, the name and address of the new owner, the listing of the place of origin and of destination of such transportation, and such other information as may be required by the state brand board. Brand inspection certificates shall be of the following kinds:

(1) An inspection certificate that is issued only when there is a change in ownership of the livestock, or when livestock is leaving the state, or when the livestock is to be slaughtered within ninety-six (96) hours.

(2) An annual inspection certificate good only for the current growing or grazing season, and which authorizes the owner to transport the livestock within and without the state. An annual inspection certificate does not authorize the sale or transfer of an ownership interest in any livestock.

(3) A seasonal grazing certificate good only for moving livestock from this state to another state for grazing, and to return some or all of that livestock to this state. The certificate shall be issued without charge if the brand inspector determines that an inspection of the animals is not necessary. If an inspection is made, the certificate shall be issued at

one-half ( $\frac{1}{2}$ ) the usual brand inspection fee, and the provisions of sections 25-232, 25-2505 and 25-2907, Idaho Code, shall not apply.

(4) A lifetime ownership and transportation certificate which is valid only for horses, mules or asses, and which authorizes the owner to transport the horses, mules or asses within and without the state. A lifetime ownership and transportation certificate may be used for the sale or transfer of an ownership interest in horses, mules or asses, but immediately upon a change of ownership interest, the new owner must apply to the brand board for a new lifetime ownership and transportation certificate, and pay the required fees.

"Livestock auction sale," for the purpose of charging and collecting the minimum inspection fee of fifty dollars (\$50.00) required by section 25-1160, Idaho Code, means and includes all public livestock markets chartered under the provisions of chapter 17, title 25, Idaho Code; means and includes any dispersal sale of livestock by a farmer, dairyman, breeder or feeder of livestock subject to brand inspection; and means and includes any sale of livestock by an association of breeders of livestock subject to brand inspection. The state brand board may, by regulation, include other private or public operations at which livestock subject to brand inspection is offered for sale within such definition.

"Written ownership transportation permit" means a statement in writing of a form approved by the state brand board, which permit shall describe the livestock being transported, is signed and dated by the person in whose name the brand on such livestock is recorded in the office of the state brand inspector, and an acknowledgment authorizing the transportation of such livestock, within the state, listing the place of origin, place of destination of such transportation, the consignee thereof and his address, and such other information as may be required by the state brand board. An ownership transportation permit is not valid for a change in ownership of livestock, and is not valid to transport livestock outside of the state.

"Stock grower" means any person owning any livestock in this state to be slaughtered for human consumption whether in this state or outside of this state, or any person engaging in the business of breeding, growing or raising livestock. [I.C., § 25-1401, as added by 1973, ch. 168, § 20, p. 339; am. and redesign. 1988, ch. 75, § 2, p. 111; am. 1991, ch. 71, § 1, p. 174.]

**Compiler's notes.** This section was formerly compiled as § 25-1401.

Former § 25-1101 was amended and redesignated as § 25-1102 by § 3 of S.L. 1988, ch. 75.

Former section 25-1401 which comprised S.L. 1905, p. 369, § 4; R.C., § 1249; am. 1917, ch. 101, § 4, p. 376; C.L., § 1249; C.S., § 1942; I.C.A., § 24-1204; 1947, ch. 71, § 3, p. 113; 1971, ch. 120, § 1, p. 404 was repealed by S.L. 1973, ch. 168, § 22.

Section 18 of S.L. 1973, ch. 168 is compiled as § 25-1180.

Section 19 of S.L. 1973, ch. 168 read: "Sections 19 and 20 of this act are a comprehensive recodification of chapters 14 and 15, title 25, Idaho Code, relating to inspection of brands."

Section 1 of S.L. 1988, ch. 75 contained repeals.

**Cross ref.** Brand inspection, § 25-1736.

State brand board, §§ 25-1102 — 25-1104, 25-1106 — 25-1109, 25-1120, 25-1149 — 25-1151, 25-1160, 25-1161.

Stock grower's brands, §§ 25-1140 — 25-1148, 25-1180.



**25-1102. Board created — Membership and organization.** — There shall be in the Idaho state police a state brand board and such board is hereby created. The state brand board shall consist of five (5) members, three (3) of whom shall be experienced in, and while serving as a member of such board, continuously and principally, engaged in, the feeding or the production of beef cattle in Idaho and no two (2) of whom shall be from the same county; one (1) of whom shall be experienced in, and while serving as a member of such board, continuously and principally, engaged in, the operation of a licensed public livestock auction market, and one (1) of whom shall be experienced in, and while serving as a member of such board, continuously and principally, engaged as a dairy milk producer. The term of office of each member of said board shall be five (5) years, excepting that of the members of said board first appointed, one (1) shall be appointed to hold office until the first Monday in January, 1975, one (1) until the first Monday of January, 1976, and one (1) until the first Monday of January, 1977, one (1) until the first Monday of January, 1978, and one (1) until the first Monday of January, 1979. Vacancies occurring on the board other than by expiration of the term, shall be filled for the unexpired term only. Each of such members of the board, before entering upon the duties of his office, shall take and subscribe to the constitutional oath of office, and be bonded to the state of Idaho in the time, form and manner provided by chapter 8, title 59, Idaho Code. The members of the board shall be compensated as provided by section 59-509(h), Idaho Code. Said compensation shall be paid in the same manner as other expenses of the state brand board are paid. Each member of said board shall be a qualified elector of the county from which he is chosen and must reside during his term of office, within the state of Idaho. Said board must hold a meeting quarterly and at any other times if so requested by any member of the board. The governor shall appoint the members of such board, both initially and thereafter as vacancies occur therein, from the recommendations of the executive committee or board of directors of the Idaho cattle association, Idaho dairymen's association and licensed public livestock auction markets. Each such recommendation shall be of at least two (2) persons for each appointment to be made by the governor. If no such recommendation is made within thirty (30) days after the occurrence of any vacancy in the membership of such board, then the appointment may be made without such recommendation. If the person or persons recommended are not deemed eligible or fit by the governor, then he shall request two (2) additional names from the respective industry segment. A member of such board shall be ineligible to hold any other state or federal office providing full-time employment, or any county or elective office. After due notice and public hearing, the governor may remove any member for cause.

The board shall elect one (1) of its members chairman, and there shall be a state brand inspector who shall serve as secretary of such board. The board is empowered to make rules for governing itself, and such rules as it may deem necessary for the enforcement of all of the duties of the state brand inspector, the laws of the state of Idaho providing registration and use of stock growers' brands, and the laws of the state of Idaho providing



inspection and other requirements for the transportation of livestock, and all laws of the state enacted for the identification, inspection and transportation of livestock, and all laws of the state designed to prevent theft and illegal butchering of livestock. [1943, ch. 70, § 1, p. 147; am. 1947, ch. 88, § 1, p. 149; am. 1969, ch. 5, § 1, p. 13; am. 1971, ch. 136, § 14, p. 522; am. 1974, ch. 27, § 75, p. 811; am. 1974, ch. 185, § 1, p. 1489; am. 1977, ch. 183, § 1, p. 510; am. 1980, ch. 247, § 22, p. 582; am. 1984, ch. 48, § 1, p. 88; am. and redesisg. 1988, ch. 75, § 3, p. 111; am. 1991, ch. 12, § 1, p. 28; am. 2000, ch. 469, § 75, p. 1450.]

**Compiler's notes.** This section was formerly compiled as § 25-1101.

Former § 25-1102 was amended and redesignated as § 25-1103 by § 4 of S.L. 1988, ch. 75.

S.L. 1939, ch. 268, creating a bureau of brands and marks in the department of agriculture, was repealed by S.L. 1943, ch. 70, § 8.

Section 13 of S.L. 1971, ch. 136 is compiled as § 25-129.

Sections 74 and 76 of S.L. 1974, ch. 27 are compiled as §§ 23-1331 and 25-1105 respectively.

Section 2 of S.L. 1977, ch. 183 is compiled as § 25-1109.

Sections 74 and 76 of S.L. 2000, ch. 469, are compiled as §§ 23-1408 and 25-1105, respectively.

Section 196 of S.L. 1974, ch. 27 provided the act should take effect on and after July 1, 1974.

Section 2 of S.L. 1974, ch. 185 provided the

act should take effect on and after July 2, 1974.

Section 2 of S.L. 1984, ch. 48 provided that the act should take effect January 1, 1985.

**Cross ref.** Collection of cattle, horse and mule fee by state brand inspector, § 25-232.

Inspection of brands, §§ 25-1101 et seq.

Livestock breaking into inclosures, proceedings before justices of the peace for assessment of damages, state brand inspector to search records, § 25-2204.

Sheriff to cooperate with Idaho state police in enforcement of brand inspection laws, § 31-2202.

State police to enforce brand inspection laws, § 19-4804.

Stock drovers' brands, § 25-1301 et seq.

Stock growers' brands, §§ 25-1140 — 25-1148, 25-1180.

**Sec. to sec. ref.** This chapter is referred to in § 67-5303.

**Cited in:** *Seward v. State Brand Div.*, 75 Idaho 467, 274 P.2d 993 (1954).

### **25-1103. State brand inspector — Appointment, salary, bond. —**

The state board shall appoint the state brand inspector who shall be a nonclassified state employee and who shall serve at the pleasure of such board and the salary of such officer shall be fixed by such board within the limits of any appropriation available therefor.

The state brand inspector shall be bonded to the state of Idaho in the time, form and manner prescribed by chapter 8, title 59, Idaho Code. [1943, ch. 70, § 2, p. 147; am. 1947, ch. 88, § 2, p. 149; am. 1971, ch. 136, § 15, p. 522; am. and redesisg. 1988, ch. 75, § 4, p. 111.]

**Compiler's notes.** This section was formerly compiled as § 25-1102.

Former § 25-1103 was redesignated as § 25-1104 by § 5 of S.L. 1988, ch. 75.

Section 16 of S.L. 1971, ch. 136 is compiled as § 33-2804.

#### **Deputy Brand Inspector.**

Deputy brand inspector had no power or authority to employ livestock trucker to help him inspect brands. *Seward v. State Brand*

*Div.*, 75 Idaho 467, 274 P.2d 993 (1954).

Independent livestock trucker who was injured while gratuitously and voluntarily aiding deputy brand inspector inspect brands was not a servant of any one as he was self-employed and he does not come within doctrine of the loaned servant rule for the purposes of Workmens' Compensation Act. *Seward v. State Brand Div.*, 75 Idaho 467, 274 P.2d 993 (1954).

**25-1104. Officer, deputies and assistants.** — The state brand inspector, with the approval of the state brand board, and within the limits of any appropriation made available for such purposes, shall appoint, fix the compensation, determine the tenure of office, and prescribe the duties and powers of such officers, deputies, and assistants as may be necessary for the performance of the duties of his office, and shall station deputies and assistants in such localities as he shall deem advisable for the performance of his duties, and the sheriff and his deputies in the counties of the state may perform the duties of ex officio brand inspectors under the guidelines set forth by the state brand board and state law. When the sheriff or his deputies act in the capacity of ex officio brand inspector as provided herein, they shall collect all brand inspection fees and other fees as provided by law and remit the same to the state brand inspector. Compensation for the sheriff and his deputies when acting as ex officio brand inspectors may be fixed by contract between the state brand board and the sheriff in accordance with section 31-3101, Idaho Code. [1943, ch. 70, § 3, p. 147; am. 1947, ch. 88, § 3, p. 149; am. 1970, ch. 125, § 1, p. 298; am. 1983, ch. 112, § 1, p. 240; am. 1985, ch. 108, § 1, p. 211; am. and redesisg. 1988, ch. 75, § 5, p. 111.]

**Compiler's notes.** This section was formerly compiled as § 25-1103.

Former § 25-1104 was redesignated as § 25-1108 by § 9 of S.L. 1988, ch. 75.

Section 2 of S.L. 1983, ch. 112 declared an emergency. Approved March 30, 1983.

**Cited in:** Seward v. State Brand Div., 75 Idaho 467, 274 P.2d 993 (1954).

**25-1105. Ex officio brand inspectors.** — The director of the Idaho state police, every state police officer, port of entry officers, county sheriff and deputy sheriff is hereby made an ex officio brand inspector, and shall have the authority to inspect any livestock described in this chapter that is being transported within the jurisdiction of said officer and to require the person transporting the same to produce satisfactory evidence from him of his right to the possession of such livestock. [I.C., § 25-1407, as added by 1973, ch. 168, § 20, p. 339; am. 1974, ch. 27, § 76, p. 811; am. and redesisg. 1988, ch. 75, § 6, p. 111; am. 2000, ch. 469, § 76, p. 1450.]

**Compiler's notes.** This section was formerly compiled as § 25-1407.

Former § 25-1105 was redesignated as § 25-1109 by § 10 of S.L. 1988, ch. 75.

Former section 25-1407 comprising I.C.A., § 24-1211, as added by 1933, ch. 208, § 1, p. 421 was repealed by S.L. 1973, ch. 168, § 22.

Sections 75 and 77 of S.L. 1974, ch. 27 are compiled as §§ 25-1102 and 31-2227, respectively.

Section 75 of S.L. 2000, ch. 469, is compiled as § 25-1102.

Section 196 of S.L. 1974, ch. 27 provided that the act should take effect on and after July 1, 1974.

**Sec. to sec. ref.** This section is referred to in § 40-510.

**25-1106. Duties of inspector and deputies as law-enforcement officers.** — The state brand inspector and his deputies shall also have power and the duty to enforce all of the laws of the state for the identification, inspection and transportation of livestock and sheep and all laws of the state designed or intended to prevent the theft of livestock and sheep and shall have all of the authority and powers of peace officers vested in the



director of the Idaho state police, with general jurisdiction throughout the state.

The state brand inspector shall give special consideration to reducing the loss of livestock and sheep by theft and to that end may inspect and cause inspections to be made outside the state of Idaho of livestock and sheep transported or driven from the state of Idaho, and shall also coordinate the efforts of all other law-enforcement officials and peace officers in the apprehension and conviction of persons who have stolen livestock, sheep, hides, pelts, or carcasses of livestock. [1943, ch. 70, § 6, p. 147; am. 1977, ch. 134, § 2, p. 289; am. and redesisg. 1988, ch. 75, § 7, p. 111; am. 2000, ch. 469, § 77, p. 1450.]

**Compiler's notes.** This section was formerly compiled as § 25-1109.

Former § 25-1106 was amended and redesignated as § 25-1161 by § 32 of S.L. 1988, ch. 75.

The name of the commissioner of law enforcement has been changed to the director of

the department of law enforcement on the authority of S.L. 1974, ch. 286, § 1 and S.L. 1974, ch. 40, § 3 (§ 67-2403).

Section 1 of S.L. 1977, ch. 134 is compiled as § 25-129.

Section 78 of S.L. 2000, ch. 469, is compiled as § 31-2202.

## 25-1106A. [Amended and Redesignated.]

**Compiler's notes.** This section was amended and redesignated as § 25-1160 by § 31 of S.L. 1988, ch. 75.

**25-1107. Duties of inspector.** — The state brand inspector shall cooperate with the Idaho state department of agriculture, insofar as the administration and enforcement of the Packers and Stockyards Act of 1921 and all amendments thereto, and shall provide all brand inspections required insofar as said inspections are for the purpose of determination of ownership of livestock. [1943, ch. 70, § 7, p. 147; am. 1973, ch. 168, § 7, p. 339; am. and redesisg. 1988, ch. 75, § 8, p. 111.]

**Compiler's notes.** This section was formerly compiled as § 25-1110.

Former § 25-1107 was amended and redesignated as § 25-1149 by § 28 of S.L. 1988, ch. 75.

The Packers and Stockyards Act, 1921, re-

ferred to in this section, is compiled as 7 U.S.C. § 181 et seq.

Section 6 of S.L. 1973, ch. 168 has been repealed.

Section 8 of S.L. 1943, ch. 70 repealed S.L. 1939, ch. 268.

**25-1108. Office of board.** — The board shall maintain offices in the state of Idaho at such places as determined by the board. [1947, ch. 88, § 4, p. 149; am. 1949, ch. 91, § 1, p. 161; am. 1973, ch. 168, § 1, p. 339; am. and redesisg. 1988, ch. 75, § 9, p. 111.]

**Compiler's notes.** This section was formerly compiled as § 25-1104.

Former § 25-1108, which comprised 1943,

ch. 70, § 5, p. 147; am. 1973, ch. 168, § 6, p. 339, was repealed by S.L. 1988, ch. 75, § 1.



**25-1109. Board to audit claims and make annual report.** — The board shall audit all bills for salaries and expenses incurred by it that may be payable from appropriations made therefore, which claims shall be audited and allowed and paid as other claims against the state. The board shall make an annual report in writing to the governor on or before the first day of December in each year, giving a statement of the transactions of the board and facts relating to the cattle industry in this state. [1947, ch. 88, § 5, p. 149; am. 1973, ch. 168, § 2, p. 339; am. 1977, ch. 183, § 2, p. 510; am. and redesisg. 1988, ch. 75, § 10, p. 111.]

**Compiler's notes.** This section was formerly compiled as § 25-1105.

Former § 25-1109 was redesignated as § 25-1106 by § 7 of S.L. 1988, ch. 75.

Section 10 of S.L. 1988, ch. 75 provided that "section 25-1105, Idaho Code, be, and the

same is hereby amended to read as follows:" Section 25-1105 was then set out, however, the section number struck out at the beginning was § 25-1110 and not § 25-1105.

Section 1 of S.L. 1977, ch. 183 is compiled as § 25-1102.

**25-1110. Brand board to make rules and regulations.** — The state brand board shall be responsible for the promulgation, implementation and enforcement of all rules and regulations as adopted by the state brand board to implement and administer the requirements of this chapter. The state brand inspector shall be responsible to the state brand board for the enforcement of all rules and regulations as adopted by the state brand board. All rule making proceedings and hearings of the board shall be governed by the provisions of chapter 52, title 67, Idaho Code. [I.C., § 25-1413, as added by 1973, ch. 168, § 20, p. 339; am. and redesisg. 1988, ch. 75, § 11, p. 111.]

**Compiler's notes.** This section was formerly compiled as § 25-1413.

Former § 25-1110 was redesignated as

§ 25-1107 by § 8 of S.L. 1988, ch. 75.

Section 12 of S.L. 1988, ch. 75 is compiled as § 25-1120.

## **25-1111. [Amended and Redesignated.]**

**Compiler's notes.** This section was amended and redesignated as § 25-1120 by § 12 of S.L. 1988, ch. 75.

## **25-1112. [Amended and Redesignated.]**

**Compiler's notes.** This section was amended and redesignated as § 25-1151 by § 30 of S.L. 1988, ch. 75.

## **25-1113 — 25-1115. Violations a misdemeanor — Separability — Construction with other acts. [Repealed.]**

**Compiler's notes.** These sections, which comprised 1943, ch. 70, §§ 9, 10, p. 147; 1947,

ch. 88, § 10, p. 149, were repealed by S.L. 1988, ch. 75, § 1.

**25-1116. [Amended and Redesignated.]**

**Compiler's notes.** This section was amended and redesignated as § 25-1150 by § 29 of S.L. 1988, ch. 75.

**25-1117. Notices of security agreements — Contents — Satisfactions — Fees — Responsibility. [Repealed.]**

**Compiler's notes.** This section, which comprised I.C., § 25-1117, as added by 1981, ch. 253, § 1, p. 542; am. 1982, ch. 143, § 1, p. 402, was repealed by S.L. 1987, ch. 284, § 2.

**25-1118, 25-1119. [Reserved.]**

**25-1120. Brand inspection.** — (1) The state brand board shall have the authority to require brand inspection of all livestock transferred in any manner, or which shall be placed for sale with or delivered into the custody of the owners or operators of any auction, auction house, sales, ring, or commission house, or to establish proof of ownership at that point in time a living animal becomes carcass meat, it shall require brand inspection not more than ninety-six (96) hours prior to slaughtering whether for commercial purposes or for the owner's immediate family needs, and whether said slaughtering is done by any permanently located firm, association, partnership, company, business or corporation, or if done by a mobile slaughtering service of any nature or type and shall have access to inspect animals utilized by rendering establishments, and to adopt such rules as it may prescribe to accomplish such brand inspection.

A brand inspection certificate signed by the seller is documentary evidence of a transfer of ownership.

(2) The transferor of livestock shall be primarily responsible to obtain a required brand inspection. However, if the seller shall fail, after ten (10) days, to obtain a required brand inspection, the transferee of the livestock shall also be responsible to obtain a brand inspection.

(3) Any person who transfers title to any livestock to another person without first obtaining a brand inspection, and who has not previously violated this section, is guilty of an infraction. Any subsequent violation of this section is a misdemeanor. [1947, ch. 88, § 8, p. 149; am. 1973, ch. 168, § 8, p. 339; am. and redesign. 1988, ch. 75, § 12, p. 111; am. 1996, ch. 90, § 1, p. 271; am. 1997, ch. 105, § 1, p. 246.]

**Compiler's notes.** This section was formerly compiled as § 25-1111.

Section 9 of S.L. 1973, ch. 168 has been repealed.

Section 11 of S.L. 1988, ch. 75 is compiled as § 25-1110.

Section 2 of S.L. 1996, ch. 90 is compiled as § 25-1126.

Section 2 of S.L. 1997, ch. 105 is compiled as § 25-1160.

Section 23 of S.L. 1973, ch. 168 reads: "If any provision or provisions of this act shall be

held to be unconstitutional, invalid or unenforceable provision or provisions shall be considered severable from the remainder of this act although contained in sections containing other provisions and shall be excluded from this act, and the fact that said provisions or provisions shall be held unconstitutional, invalid or unenforceable shall in no way affect any other provisions of this act although contained in the same section."

Section 24 of S.L. 1973, ch. 168 provides that § 14 of the act shall be in full force and



effect on and after July 1, 1974, and the remaining sections shall be in full force and effect on and after July 1, 1973.

**25-1121. Requirements for brand inspection — Written permit in lieu of inspection.** — (1) Any person desiring to transport, remove, or drive any livestock from the boundaries of this state in any manner shall, before doing so, apply to the state brand inspector to inspect the same for marks and brands, and on such application (or without said application if said officer has knowledge of such removal) the brand inspector shall immediately inspect said livestock for brands and marks and keep an accurate record of the same with the name and residence of owner or shipper and name, sex and kind of livestock. Any person desiring an inspection pursuant to this paragraph must notify a state brand inspector or person duly authorized to accomplish the inspection. If the inspector finds that the livestock have brands that are not owned by the person claiming the same, then such person shall be required to produce a bill of sale or other satisfactory evidence of ownership. Upon proof of ownership the inspector shall give the person a certificate stating the number and kind of livestock and their marks and brands and thereupon the said person shall be permitted to transport said livestock from this state. A copy of the brand inspection certificate shall accompany the livestock to final destination.

(2) Any person desiring to transport livestock, not his own, within the boundaries of this state in any manner shall before doing so, have in his possession a written transportation permit properly completed and signed by the owner or an authorized agent of the owner of the livestock being transported or a brand inspection certificate. A copy of the written permit or brand inspection certificate shall accompany the livestock to final destination.

(3) Annual brand inspections certificates for all livestock for any purpose, other than sale or trade, may be issued by the state brand inspector or his deputies in lieu of the regularly required brand inspection or other written permits for periods of not to exceed one (1) year in duration and for a fee of not to exceed five dollars (\$5.00), each as determined by regulation of the state brand board.

(4) The owner of the livestock shall pay all fees required for inspection services pursuant to this chapter, section 25-232, Idaho Code, section 25-2505, Idaho Code, and section 25-2907, Idaho Code.

(5) Any transportation of livestock in violation of this chapter is prohibited. Livestock transported in violation of this chapter shall be detained until compliance with this chapter has been made. [I.C., § 25-1402, as added by 1973, ch. 168, § 20, p. 339; am. 1975, ch. 23, § 2, p. 36; am. 1984, ch. 6, § 1, p. 10; am. 1987, ch. 61, § 5, p. 109; am. and redesisg. 1988, ch. 75, § 13, p. 111.]

**Compiler's notes.** This section was formerly compiled as § 25-1402.

The words enclosed in parentheses so appeared in the law as enacted.

Section 1 of S.L. 1975, ch. 23 is compiled as § 25-1160.

Section 4 of S.L. 1987, ch. 61 is compiled as § 25-1146.



**25-1122. Ownership and transportation certificate.** — (1) The owner or owners of any horses, mules or asses desiring to transport them within the state for any purpose other than sale or trade, may, upon request to the state brand inspector, be issued an ownership and transportation certificate, which certificate shall be issued in lieu of the required brand inspection certificate or other written permit for each horse, mule or ass to be transported.

(2) An ownership and transportation certificate may be used by the owner or owners of a horse, mule or ass for identification purposes and as prima facie proof of ownership of any animal described by such a certificate.

(3) The ownership and transportation certificate shall be valid as long as the horse, mule or ass described therein remains under the ownership of the person or persons to whom the certificate is issued.

(4) The ownership and transportation certificate of a horse, mule or ass must accompany the animal for which it is issued at all times while the animal is in transit.

(5) Each ownership and transportation certificate of a horse, mule or ass shall identify the particular animal by color, markings, sex, age and where applicable by brand, registration number, tattoo or other marks as provided for by regulation of the state brand board.

(6) There shall be a fee in an amount to be set by the state brand board, not to exceed twenty-five dollars (\$25.00), for issuance of each ownership and transportation certificate, which fee shall be in addition to any brand inspection certificate or other written permit which may be requested by the owner or owners of a horse, mule or ass under other provisions of law.

(7) Upon any change of ownership of a horse, mule or ass for which an ownership and transportation certificate has been issued, the former owner or owners may transfer the certificate to the new owner or owners upon payment of a fee to be set by the state brand board, not to exceed twenty-five dollars (\$25.00) per certificate.

(8) The state brand board may, under such terms and conditions as it deems necessary to protect ownership of horses, mules and asses, provided by regulation that ownership and transportation certificates may be used in transportation of horses, mules or asses to and from points outside of the state of Idaho, and may provide that similar certificates from other states may be used for proof of ownership of horses, mules or asses entering Idaho. [I.C., § 25-1402A, as added by 1975, ch. 23, § 3, p. 36; am. 1987, ch. 61, § 6, p. 109; am. and redessig. 1988, ch. 75, § 14, p. 111.]

**Compiler's notes.** This section was formerly compiled as § 25-1402A.

Section 7 of S.L. 1987, ch. 61 read: "An emergency existing therefor, which emergency is hereby declared to exist, section 1 of this act shall be in full force and effect on and

after April 1, 1987. All other sections of this act shall be in full force and effect on and after July 1, 1987."

Section 4 of S.L. 1975, ch. 23 provided that the act should be in full force and effect on and after June 1, 1975.

**25-1123. Exemption from brand requirement and inspection.** — A sucking calf or colt without brand, accompanying its mother in any shipment, shall be deemed to bear the same brand as its mother for the purposes of this chapter.

Any person desiring to transport any livestock from the boundaries of this state by any means for the purpose of seasonally grazing the livestock in an adjoining state, shall apply before doing so to the state brand inspector for an inspection; provided, however, that if the state brand inspector determines that an inspection is not necessary, he may issue a written permit without charge to allow such transport. If in the opinion of the state brand inspector an inspection is deemed advisable, such inspection shall be made at one-half (½) the usual brand inspection fee and the provisions of section 25-232, section 25-2505, and section 25-2907, Idaho Code, shall not apply. [I.C., § 25-1403, as added by 1973, ch. 168, § 20, p. 339; am. and redesisg. 1988, ch. 75, § 15, p. 111.]

**Compiler's notes.** This section was formerly compiled as § 25-1403.

Former section 25-1403 comprising S.L. 1905, p. 369, § 8; R.C., § 1253; 1917, ch. 101,

§ 7, p. 377; C.L., § 1253; C.S., § 1945; I.C.A., § 24-1207; 1949, ch. 135, § 1, p. 238 was repealed by S.L. 1973, ch. 168, § 22.

**25-1124. Certificate or permit to be produced upon demand. —** Every person transporting livestock shall, upon demand, permit examination thereof by any brand inspector or peace officer the brand inspection certificate or written permit and allow copies thereof to be taken. [I.C. § 25-1404, as added by 1973, ch. 168, § 20, p. 339; am. and redesisg. 1988, ch. 75, § 16, p. 111.]

**Compiler's notes.** This section was formerly compiled as § 25-1404.

Former section 25-1404 comprising S.L.

1905, p. 369, § 9; R.C., § 1254; S.L. 1917, ch. 101, § 8, p. 378; C.L., § 1254; I.C.A., § 24-1208 was repealed by S.L. 1973, ch. 168, § 22.

**25-1125. Inspection of livestock in transit — Impounding when certificate or permit erroneous. —** Any livestock in transit or being transported in any manner, may be inspected at any time or place, without liability by any brand inspector of the state or by any peace officer or other person authorized by statute, who may demand of the carrier or person in charge of such livestock the certificate of inspection or written permit and he may compare the marks, brands, and description given in such documents with those of such livestock and if he shall find from such inspection that such certificate is falsely made, or is erroneous in any material respect, or that such livestock or any head thereof do not belong to the person as indicated in such document, he may, unless satisfactory proof of the ownership or right of possession of such livestock be furnished him, impound any such livestock and may take such other action against such carrier or person in charge as may be authorized by law. [I.C., § 25-1405, as added by 1973, ch. 168, § 20, p. 339; am. and redesisg. 1988, ch. 75, § 17, p. 111.]

**Compiler's notes.** This section was formerly compiled as § 25-1405.

Former section 25-1405 comprising I.C.A.,

§ 24-1209, as added by 1933, ch. 208, § 1, p. 421; 1947, ch. 71, § 1, p. 113 was repealed by S.L. 1973, ch. 168, § 22.



**25-1126. Owner of recorded brand — Right to cause inspection of livestock in transit.** — Every citizen of Idaho who is the owner of any duly recorded brand is hereby authorized to require livestock in transit, or which is about to be shipped, transported or otherwise removed, to be inspected as required by law, for the purpose of determining whether or not such livestock has been duly inspected by an official brand inspector or peace officer. No fee shall be allowed to any such citizen for performing the rights and privileges herein above granted. [I.C., § 25-1406, as added by 1973, ch. 168, § 20, p. 339; am. and redesisg. 1988, ch. 75, § 18, p. 111; am. 1996, ch. 90, § 2, p. 271.]

**Compiler's notes.** This section was formerly compiled as § 25-1406.

Former section 25-1406 comprising I.C.A., § 21-1210, as added by 1933, ch. 208, § 1, p. 421 was repealed by S.L. 1973, ch. 168, § 22.

Section 19 of S.L. 1988, ch. 75 is compiled as § 25-1140.

Sections 1 and 3 of S.L. 1996, ch. 90 are compiled as §§ 25-1120 and 25-1150, respectively.

## **25-1127 — 25-1139. [Reserved.]**

**25-1140. Use of brands restricted.** — Every stock grower in this state must use a brand for cattle, and a brand for horses, mules and asses, which brand must be placed in a conspicuous place on the animal. It shall be unlawful for any person to use any brand as herein provided, unless such brand be designated in the application for the recording of the brand and the brand be recorded with the state brand inspector. Each application for the recording of a brand shall include only one (1) brand for cattle and one (1) brand for horses, mules and asses, and one (1) brand for sheep, and separate applications may be filed by any stock grower to have any additional brand recorded. [1905, p. 352, § 2; reen. R.C. & C.L., § 1225; C.S., § 1918; I.C.A., § 24-1002; am. 1937, ch. 135, § 1, p. 216; am. 1951, ch. 146, § 1, p. 338; am. and redesisg. 1988, ch. 75, § 19, p. 111.]

**Compiler's notes.** This section was formerly compiled as § 25-1202.

Section 2 of S.L. 1937, ch. 135 is compiled as § 25-1144.

Section 18 of S.L. 1988, ch. 75 is compiled as § 25-1126.

**Collateral References.** 4 Am. Jur. 2d, Animals, §§ 8, 9.

3A C.J.S., Animals, §§ 15-21.

**25-1141. Requirements for branding irons.** — Brands shall be made by hot iron or freeze iron and shall be done in such manner to be clear and recognizable, and legible so as to enable ready identification. The major character or characters on the branding iron when applied to cattle shall be not less than three and one-half (3 ½) inches in height, and/or three and one-half (3 ½) inches in length, width or diameter. The major character or characters on the branding iron when applied to horses, mules and asses shall be not less than two (2) inches in height, and/or two (2) inches in length, width or diameter. Brands made in any other manner or size not permitted by this section shall be invalid and will not be recorded. All brands presently recorded at the effective date of this act shall be valid



brands, but provided further that upon renewal of such brands, then and in that event such brands must comply with this chapter. Brands for sheep shall not be subject to the height, length, width or diameter limitations imposed by this section, but shall be of such height, length, width or diameter as prescribed by the state brand board, and brands for sheep shall not be subject to the hot iron or freeze iron limitations imposed by this section for cattle, horses, mules and asses. [I.C., § 25-1202A, as added by 1973, ch. 168, § 10, p. 339; am. and redesisg. 1988, ch. 75, § 20, p. 111.]

**Compiler's notes.** This section was formerly compiled as § 25-1202A.

Section 9 of S.L. 1973, ch. 168 has been repealed.

**25-1142. Sheep owners to use brands — Use of earmarks — Use of nose brands and tattoo brands — Unrecorded brands.** — Every sheep owner may use one (1), and only one (1), brand for sheep, which brand may be recorded as herein provided. Each such sheep owner, in addition to his brand may record and use for sheep a hot iron brand on the nose or a tattoo brand on either the flank or the ear, or both a hot iron brand on the nose and a tattoo brand on either the flank or the ear. In addition to his recorded brand, hot iron brand on the nose or tattoo brand on either the flank or the ear, he may, for the purpose of distinguishing the sheep of one of his bands from the sheep of the other, use any one or more of the digits except the digit 1 and 0, which herd brand shall not be recorded. Neither of the digits shall be used on sheep except as provided in this section. [1905, p. 352, § 3; reen. R.C., § 1226; am. 1911, ch. 217, § 1, p. 696; reen. C.L., § 1226; C.S., § 1919; I.C.A., § 24-1003; am. 1949, ch. 46, § 1, p. 81; am. 1973, ch. 168, § 11, p. 339; am. and redesisg. 1988, ch. 75, § 21, p. 111.]

**Compiler's notes.** This section was formerly compiled as § 25-1203.

**25-1143. Brands to be recorded.** — All brands shall be recorded with the state brand inspector. Upon recording pursuant to this section, a recorded brand shall be prima facie evidence of ownership of livestock, and that such owner is entitled to possession of said livestock. Proof of recorded brand shall be by original certificate issued to said owner by the state brand inspector, or a certified copy of the recorded brand issued by the state brand inspector. Parol evidence shall be inadmissible to prove the ownership of any recorded brand. [1905, p. 352, § 5, and parts of §§ 6, 7; compiled and reen. R.C., § 1228; am. 1911, ch. 217, § 2, p. 696; am. 1913, ch. 171, p. 543; reen. C.L., § 1228; C.S., § 1920; I.C.A., § 24-1004; am. 1973, ch. 168, § 12, p. 339; am. and redesisg. 1988, ch. 75, § 22, p. 111.]

**Compiler's notes.** This section was formerly compiled as § 25-1204.

Prima facie evidence.  
Testimony.

ANALYSIS

Brand as bearing notice of ownership.  
Evidence.  
Parol evidence.

**Brand as Bearing Notice of Ownership.**  
Where the livestock sold by the defendant was branded, and the brand was duly registered and filed in the department of agriculture as plaintiff's brand, the defendant had

"notice" of the plaintiff's ownership of the livestock having such brand. *Radermacher v. Daniels*, 64 Idaho 376, 133 P.2d 713 (1943).

#### **Evidence.**

There is nothing in this section to prevent introduction of evidence of unrecorded brand as matter of identification and not of ownership. *State v. Grimmer*, 33 Idaho 203, 193 P. 380 (1920).

Formerly statute forbade use of evidence of unrecorded brand, earmark, or eartag for purposes of identification, but prohibition against use of such evidence has been omitted from this section. *State v. Grimmer*, 33 Idaho 203, 193 P. 380 (1920).

#### **Parol Evidence.**

Parol evidence is inadmissible to prove ownership of a stock brand. *State v. Dunn*, 13 Idaho 9, 88 P. 235 (1907).

#### **Prima Facie Evidence.**

Even though cattle may be branded with another person's brand this section only states that a recorded brand is prima facie evidence of ownership of livestock. It does not preclude a party from rebutting this evidence of ownership and asserting an interest in the cattle. *Fisher v. Fisher*, 104 Idaho 68, 656 P.2d 129 (1982).

#### **Testimony.**

Testimony as to understanding between brothers with reference to cattle branded in certain way was inadmissible as attempt to prove ownership by brand not established. *Servel v. Corbett*, 49 Idaho 536, 290 P. 200 (1930).

**Collateral References.** 4 Am. Jur. 2d, Animals, § 8.

3A C.J.S., Animals, §§ 16, 18.

**25-1144. Manner of recording brands.** — Every stock grower whose brands are not recorded, desiring to use any brand on any livestock shall make and file an application setting forth a facsimile and description of the brand which he desires to use which application shall state the post-office address and county of his residence and he shall file such application with the state brand inspector and the same shall be recorded in a book kept for that purpose, by the state brand inspector and from and after the filing of such application, the stock grower filing the same, shall have the exclusive right to use such brand, within the state of Idaho. Such recording shall be valid for a period of not more than five (5) years, as determined by rules of the state brand board, subject to the renewal provisions of section 25-1145, Idaho Code. Such person upon the filing of the brand shall pay to the state brand inspector for recording the brand the sum of fifty dollars (\$50.00) and the board may prorate the fee to facilitate implementation of a staggered brand renewal system. It shall be the duty of the state brand inspector to furnish without further or other charge, one (1) certified copy of the application to the owner thereof upon his request and for each additional copy he shall be paid a reasonable fee as determined by the state brand board not to exceed one dollar and fifty cents (\$1.50) for the additional certified copies: provided, further, that the state brand inspector shall not file or record any such brand if the same has already been filed or recorded by him in favor of some other stock grower. The certified copy of the application shall contain the registration number of such brand, description or facsimile copy of the recorded brand, location of brand on the animal, expiration of the recorded brand and the name and address of the owner of the recorded brand. [1905, p. 352, § 8; compiled and reen. R.C., § 1229; C.L., § 1229; C.S., § 1921; I.C.A., § 24-1005; am. 1933, ch. 173, § 1, p. 314; am. 1937, ch. 135, § 2, p. 216; am. 1949, ch. 160, § 1, p. 346; am. 1951, ch. 108, § 1, p. 253; am. 1973, ch. 168, § 13, p. 339; am. 1974, ch. 47, § 1, p. 1093; am. 1987, ch. 61, § 2, p. 109; am. and redesign. 1988, ch. 75, § 23, p. 111; am. 1994, ch. 101, § 1, p. 229; am. 2000, ch. 79, § 1, p. 166.]



**Compiler's notes.** This section was formerly compiled as § 25-1205.

Section 1 of S.L. 1937, ch. 135, is compiled as § 25-1140.

Section 3 of S.L. 1951, ch. 108, is compiled as § 25-1146.

Section 2 of S.L. 1974, ch. 47, is compiled as § 25-1145.

Section 1 of S.L. 1987, ch. 61, is compiled as § 25-1160 and § 3, is compiled as § 25-1145.

Section 2 of S.L. 1951, ch. 108, repealed section 25-1206.

Section 2 of S.L. 2000, ch. 79, is compiled as § 25-1146.

Section 3 of S.L. 2000, ch. 79 declared an emergency. Approved March 29, 2000.

**Collateral References.** 4 Am. Jur. 2d, Animals, § 8.

3A C.J.S., Animals, § 19.

**25-1145. Renewal of brands.** — (1) On July 1, 1995 and at the end of each recording period of an original application pursuant to section 25-1144, Idaho Code, and at the end of each successive period thereafter on the first day of July, the recording of every brand in the office of the state brand inspector shall be renewed upon application for such renewal by the owner. The fee of the state brand inspector for filing each such renewal application shall be not more than fifty dollars (\$50.00) and it shall be the duty of the state brand inspector to furnish without further or other charge one (1) certified copy of the certificate of such brand to the owner thereof upon his request, and for each additional certified copy the state brand inspector shall be paid reasonable fee as determined by the state brand board not to exceed one dollar and fifty cents (\$1.50) for the additional certified copy. The fee for recording each renewal shall be paid coincident with the filing of the application therefor.

(2) Each application for the renewal and the record of renewal of each brand shall be made in the same manner as is provided by law for the filing of an original application for the recording of a brand.

(3) If an application for the renewal of any brand shall not be made and the fee therefor paid within the period of six (6) months after the expiration date for such renewal, then such brand may be allotted by the state brand inspector to any other person who shall apply therefor. [1919, ch. 116, § 2, p. 403; C.S., § 1923; I.C.A., § 24-1007; am. 1933, ch. 173, § 2, p. 314; am. 1937, ch. 135, § 4, p. 216; am. 1939, ch. 78, § 1, p. 135; am. 1949, ch. 160, § 2, p. 346; am. 1955, ch. 31, § 1, p. 50; am. 1973, ch. 168, § 14, p. 339; am. 1974, ch. 47, § 2, p. 1093; am. 1987, ch. 61, § 3, p. 109; am. and redesign. 1988, ch. 75, § 24, p. 111; am. 1994, ch. 101, § 2, p. 229.]

**Compiler's notes.** This section was formerly compiled as § 25-1207.

Sections 1 and 3 of S.L. 1933, ch. 173 are compiled as §§ 25-1144 and 25-1805, respectively.

Section 4 of S.L. 1933, ch. 173 was repealed by S.L. 1976, ch. 88, § 1.

Section 1 of S.L. 1974, ch. 47 is compiled as § 25-1144.

Section 2 of S.L. 1987, ch. 61 is compiled as § 25-1144.

Section 5 of S.L. 1933, ch. 173 declared an emergency. Approved March 11, 1933.

Section 24 of S.L. 1973, ch. 168 provided that section 14 of the act shall be in full force and effect on and after July 1, 1974, and the remaining sections shall be in full force and effect on and after July 1, 1973.

Section 3 of S.L. 1974, ch. 47 read: "Section 2 of this act shall be in full force and effect on and after July 1, 1974, except that the brand board may take all necessary actions prior to July 1, 1974, including hearings and adoption of rules and regulations required to effect the purposes of such section on July 1, 1974."



**25-1146. Sales and transfers of brands.** — Any brand recorded in accordance with the requirements of this chapter shall be the property of the stock grower in whose name the same shall be recorded, and shall be subject to sale, assignment, transfer, devise and descent, the same as personal property. Instruments of writing evidencing any such sale, assignment or transfer shall be acknowledged as deeds to real estate are now required to be, and shall be recorded in the office of the state brand inspector in a book to be by said officer kept for that purpose, which shall be properly indexed. The recording of such instruments in said office shall have the same force and effect as to third parties, as the recording of instruments affecting real estate, and the acknowledgment of the same shall have the same force and effect as the acknowledgment of deeds to real estate, and certified copies of the record of any such instrument, duly acknowledged, may be introduced in evidence the same as is now provided for certified copies of instruments affecting real estate. The fee of the state brand inspector for recording the writings evidencing each such sale, assignment or transfer shall be twenty-five dollars (\$25.00). [1905, p. 352, § 11; reen. R.C., § 1231; am. 1911, ch. 217, § 5, p. 697; reen. C.L., § 1231; C.S., § 1924; I.C.A., § 24-1008; am. 1937, ch. 135, § 5, p. 216; am. 1949, ch. 160, § 3, p. 346; am. 1951, ch. 108, § 3, p. 253; am. 1973, ch. 168, § 15, p. 339; am. 1987, ch. 61, § 4, p. 109; am. and redesisg. 1988, ch. 75, § 25, p. 111; am. 2000, ch. 79, § 2, p. 166.]

**Compiler's notes.** This section was formerly compiled as § 25-1208.

Section 6 of S.L. 1937, ch. 135 is compiled herein as § 25-1148.

Section 1 of S.L. 1951, ch. 108 is compiled herein as § 25-1144.

Section 5 of S.L. 1987, ch. 61 is compiled as § 25-1121.

Section 1 of S.L. 2000, ch. 79, is compiled as § 25-1144.

Section 2 of S.L. 1951, ch. 108 repealed § 25-1206.

Section 7 of S.L. 1987, ch. 61 read: "An

emergency existing therefor, which emergency is hereby declared to exist, section 1 of this act shall be in full force and effect on and after April 1, 1987. All other sections of this act shall be in full force and effect on and after July 1, 1987."

Section 3 of S.L. 2000, ch. 79 declared an emergency. Approved March 29, 2000.

**Cross ref.** Introduction of certified copies of instruments affecting real estate, § 9-410.

**Collateral References.** 3A C.J.S., Animals, § 22.

**25-1147. Conflicting brands.** — In deciding as to conflicts of brands, the state brand inspector shall reject any brand being the same as one previously recorded in the same place on any animal; it shall also reject all brands known as solid brands and the window sash brand. A variation in the size of a letter, number or figure shall not constitute a new brand and shall be rejected. Combinations of letters, numbers or figures may be permitted, though the same letter, number or figure may have been recorded singly or together, if in the judgment of the state brand inspector, said combination is so different from any previous record as to constitute a new brand with no danger of infringement. The inspector shall have the right to reject any brand that may in his judgment endanger infringement of the previously recorded brand. [1905, p. 352, § 12; reen. R.C., § 1232; am. 1911, ch. 217, § 6, p. 697; reen. C.L., § 1232; C.S., § 1925; I.C.A., § 24-1009; am. 1973, ch. 168, § 16, p. 339; am. and redesisg. 1988, ch. 75, § 26, p. 111.]

**Compiler's notes.** This section was formerly compiled as § 25-1209.

**25-1148. Brand book.** — It shall be the duty of the state brand inspector from time to time as it may be necessary, but at least every two (2) years, to cause to be published in book form a list of all brands on record at the time of publication. In the years when the brand book is not issued, the state brand inspector may issue a supplement to the brand book theretofore issued containing the additional brands or changes in ownership of brands between the time of the last publication and the time of issuing such supplement. The brand book shall contain the facsimile of all brands recorded together with the owners' names and post-office addresses. Brand records shall be arranged in convenient form for reference. It shall be the duty of the state brand inspector to furnish free of charge to each sheriff in this state one (1) copy of said brand book and supplement, in whose office it shall be kept open for inspection by all persons. Brand books and supplements may be sold outright or by subscription to the general public at a price to be determined by the state brand inspector which price shall cover the cost of the publications. [1905, p. 352, § 13; am. R.C., § 1233; am. 1911, ch. 217, § 7, p. 698; reen. C.L., § 1233; am. 1919, ch. 116, § 3, p. 403; C.S., § 1926; I.C.A., § 24-1010; am. 1937, ch. 135, § 6, p. 216; am. 1943, ch. 59, § 1, p. 126; am. 1949, ch. 160, § 4, p. 346; am. 1973, ch. 168, § 17, p. 339; am. and redesisg. 1988, ch. 75, § 27, p. 111.]

**Compiler's notes.** This section was formerly compiled as § 25-1210.

Section 7 of S.L. 1937, ch. 135 is compiled as § 25-1180.

**25-1149. Disposition of recording fees.** — All fees received for the recording and renewal of brands under the provisions of chapter 11, title 25, Idaho Code, shall be credited to the brand recording account, which the state controller is authorized and directed to establish in the agency asset fund in the state treasury. All interest earned from investment of moneys in the brand recording account shall accrue to the account. [1943, ch. 70, § 4, p. 147; am. 1945, ch. 128, § 1, p. 195; am. 1947, ch. 88, § 7, p. 149; am. 1973, ch. 168, § 5, p. 339; am. 1977, ch. 183, § 5, p. 510; am. and redesisg. 1988, ch. 75, § 28, p. 111; am. 1994, ch. 180, § 38, p. 420.]

**Compiler's notes.** This section was formerly compiled as § 25-1107.

Section 241 of S.L. 1994, ch. 180 provided that such act should become effective on and after the first Monday in January, 1995 [January 2, 1995] if the amendment to the Constitution of Idaho changing the name of the state auditor to state controller [1994 S.J.R. No. 109, p. 1493] was adopted at the general election held on November 8, 1994. Since such amendment was adopted, the amendment to this section by § 38 of S.L. 1994, ch. 180 became effective January 2, 1995.

Sections 37 and 39 of S.L. 1994, ch. 180 are

compiled as §§ 23-404 and 25-1174, respectively.

Section 6 of S.L. 1977, ch. 183 provided that the act should take effect on and after July 1, 1977.

Section 241 of S.L. 1994, ch. 180 provided: "This act shall be in full force and effect on and after the first Monday of January, 1995, if the state board of canvassers has certified that an amendment to the Constitution of the State of Idaho has been adopted at the general election of 1994 to change the name of the state auditor to state controller."



**25-1150. Brand recordings open to public — Evidence.** — The brand recordings kept by the state brand inspector shall be open to the inspection of the public and shall be prima facie evidence of the facts recited therein in any of the courts of this state. [1905, p. 369, § 6; reen. R.C., § 1252; am. 1917, ch. 101, § 6, p. 377; reen. C.L., § 1252; C.S., § 1944; I.C.A., § 24-1206; am. and redesisg. 1988, ch. 75, § 29, p. 111; am. 1996, ch. 90, § 3, p. 271.]

**Compiler's notes.** This section was formerly compiled as § 25-1116.

Sections 2 and 4 of S.L. 1996, ch. 90 are compiled as §§ 25-1126 and 25-1181, respectively.

**Cross ref.** State brand inspector, appointment, § 25-1102.

**25-1151. Deceptive and infringing brands — Prevention of use.** — The state brand board shall have the right to adopt such rules and regulations as it may prescribe to prevent the use of deceptively similar brands in the state of Idaho and to prevent the use of infringing brands, and is hereby authorized to cancel any brand in the state of Idaho of priority below any brand which it shall infringe. [1947, ch. 88, § 9, p. 149; am. and redesisg. 1988, ch. 75, § 30, p. 111.]

**Compiler's notes.** This section was formerly compiled as § 25-1112.

Section 31 of S.L. 1988, ch. 75 is compiled as § 25-1160.

## **25-1152 — 25-1159. [Reserved.]**

**25-1160. Brand inspection fees.** — (1) The maximum fee which shall be charged by the state brand inspector and his deputies for brand inspection shall be:

- (a) One dollar (\$1.00) for each head of cattle;
- (b) One dollar and fifty cents (\$1.50) for each head of horses, mules and asses.

(2) A minimum fee of ten dollars (\$10.00) shall be charged by the state brand inspector and his deputies for each brand inspection certificate issued, whether for cattle, horses, mules or asses, or a combination thereof. The minimum brand inspection fee shall apply only in those cases when a brand inspector must travel from his assigned duty post.

(3) The minimum fee for brand inspection services at any normally scheduled livestock auction sale is fifty dollars (\$50.00) per day, and shall be paid by the livestock auction sale, whether or not the inspection fees received from the owners of livestock inspected equals the minimum fee. If the fees paid by the owners of livestock inspected at the sale exceed the minimum fee, the actual amount of fees collected shall be paid, rather than the minimum amount.

(4) The fee for brand inspection services at any livestock auction sale which is not a normally scheduled livestock auction sale shall be:

- (a) Eighteen dollars (\$18.00) per hour for each hour that each brand inspector spends engaged in the performance of brand inspection services at the livestock auction sale;



(b) A mileage rate as established by the state board of examiners per mile per vehicle for each mile that said brand inspector(s) must travel to and from the sale from his assigned duty post.

The minimum fee, not including mileage, shall be the actual hours worked, or thirty-six dollars (\$36.00) per day, or the inspection fees as set forth in subsection (1) of this section, whichever is greater.

(5) The state brand board may adopt a schedule or schedules of fees which are below the maximum fees and may adjust such schedule or schedules from time to time whenever such board finds that the cost of administering and enforcing the laws of the state of Idaho for brand inspection of livestock can be maintained with such below-maximum fees. All such fees shall be paid by the owner of the cattle, horses, mules and asses and credited to the state brand account.

(6) All brand inspection fees, and all other fees required by law to be collected by the brand inspector, are due and payable at the time of inspection, but the brand board may, by rules, allow all of such fees to be paid on a schedule that requires payment at least monthly, after receiving a request for such delayed payment schedule and after such request is approved by the state brand inspector. The brand board may require a security deposit to insure the prompt payment of all fees owed to the state. Failure to pay as required shall be cause for the brand inspector to file an action in the district court of the county wherein the inspection was made for the amount of all fees owed, plus all costs and reasonable attorney's fees associated with the action plus interest at the rate specified in section 28-22-104, Idaho Code, on the amount owed from the due date.

(7) Any brand inspector who must travel beyond the border of the state of Idaho to investigate a possible violation of this chapter is entitled to a mileage rate, as established by the state board of examiners, per mile per vehicle for each mile that the brand inspector must travel to and from his assigned duty post, and eighteen dollars (\$18.00) per hour for each hour that each brand inspector spends engaged in the investigation. The minimum fee for each brand inspector, not including mileage, shall be the actual hours worked, or thirty-six dollars (\$36.00) per day, or the hourly inspection fees, whichever is greater. [I.C., § 25-1106A, as added by 1959, ch. 91, § 1, p. 203; am. 1969, ch. 190, § 1, p. 559; am. 1973, ch. 168, § 4, p. 339; am. 1975, ch. 23, § 1, p. 36; am. 1976, ch. 180, § 1, p. 652; am. 1977, ch. 183, § 4, p. 510; am. 1987, ch. 61, § 1, p. 109; am. and redesar. 1988, ch. 75, § 31, p. 111; am. 1993, ch. 122, § 1, p. 311; am. 1997, ch. 105, § 2, p. 246; am. 2000, ch. 80, § 1, p. 168.]

**Compiler's notes.** This section was formerly compiled as § 25-1106A.

Section 2 of S.L. 1975, ch. 23 is compiled as § 25-1121.

Section 2 of S.L. 1976, ch. 180 is compiled as § 25-1736.

Section 2 of S.L. 1987, ch. 61 is compiled as § 25-1144.

Section 30 of S.L. 1988, ch. 75 is compiled as § 25-1151.

Sections 1 and 3 of S.L. 1997, ch. 105 are

compiled as §§ 25-1120 and 25-1181, respectively.

Section 3 of S.L. 1976, ch. 180 declared as emergency. Approved March 19, 1976.

Section 7 of S.L. 1987, ch. 61 read: "An emergency existing therefor, which emergency is hereby declared to exist, section 1 of this act shall be in full force and effect on and after April 1, 1987. All other sections of this act shall be in full force and effect on and after July 1, 1987."

Section 4 of S.L. 1975, ch. 23 provided that the act should take effect on and after June 1, 1975. **Sec. to sec. ref.** This section is referred to in § 25-1736.

**25-1161. Fees — State brand account.** — All fees of every kind collected by the office of the state brand inspector or under any rules or regulations made pursuant to the provisions of chapter 11, title 25, Idaho Code, shall be deposited in the state treasury and kept in a special and separate account in the dedicated fund to be known as the "state brand account"; said account is hereby appropriated for the use and expenditure of said board in carrying out the provisions of this chapter and in the performance of all of its duties and the duties of the state brand inspector and in carrying out the rules and regulations which shall be made by the board, and for salaries and wages and other expenses of the office of the state brand inspector, the state brand board, and its employees for the purpose of fulfilling the duties of such office, and said account is hereby declared to be a continuing account. [1947, ch. 88, § 6, p. 149; am. 1973, ch. 168, § 3, p. 339; am. 1977, ch. 183, § 3, p. 510; am. and redesisg. 1988, ch. 75, § 32, p. 111.]

**Compiler's notes.** This section was formerly compiled as § 25-1106. **Section 33 of S.L. 1988, ch. 75 is compiled as § 25-1170.**

**25-1162 — 25-1169. [Reserved.]**

**25-1170. Reciprocity.** — Any transportation of livestock in this state which originates in another state, and which complies with the brand inspection laws of such state requisite to such transportation, shall be deemed for all purposes to be in compliance with the state brand inspection laws of this state. [I.C., § 25-1409, as added by 1973, ch. 168, § 20, p. 339; am. and redesisg. 1988, ch. 75, § 33, p. 111.]

**Compiler's notes.** This section was formerly compiled as § 25-1409. **Section 32 of S.L. 1988, ch. 75 is compiled as § 25-1161.**

**25-1171. Impoundment of vehicles used in transporting stolen livestock.** — The use of any vehicle for the transportation of any stolen livestock or the products thereof, shall be unlawful and such vehicle shall be forfeited to and confiscated by the state. Any such vehicle so used in transporting such stolen livestock shall be seized without warrant by the sheriff of the county where such vehicle is found and sold by him at public auction and the proceeds of such sale paid to the county treasurer to be deposited in the current expense fund of the county; provided, however, that no such sale shall be made until ten (10) days notice thereof shall have been given the person in whose custody such vehicle is found, and notice given to the registered owner of said vehicle, nor in the event, if within such period the owner of such vehicle or the person entitled to the possession thereof shall commence an action in prohibition or injunction against the sheriff to restrain such sale, until after the termination of such proceedings; and provided, further, that such vehicle shall not be confiscated or subject to the



forfeiture if the same be a stolen vehicle or loaned vehicle at the time it is used for such unlawful transportation and the owner thereof is not in collusion with the party or parties guilty of the theft. [I.C., § 25-1408, as added by 1973, ch. 168, § 20, p. 339; am. and redesign. 1988, ch. 75, § 34, p. 111.]

**Compiler's notes.** This section was formerly compiled as § 25-1408.  
Former section 25-1408 comprising I.C.A.,

§ 24-1212, as added by 1933, ch. 208, § 1, p. 421 was repealed by S.L. 1973, ch. 168, § 22.

**25-1172. Impoundment of livestock if no satisfactory evidence of ownership.** — Livestock which shall be found by any brand inspector, deputy brand inspector or peace officer of the state in the possession of any person who shall be unable to furnish to such inspector or peace officer, upon request therefor, satisfactory evidence of the ownership of such livestock or the right to possession thereof, may be taken into the possession of such inspector or peace officer and detained by him without liability, and at the expense of the owner thereof, until the ownership of such livestock shall be established. No livestock shall be released to the owner thereof until all costs and expenses of detaining said livestock have been paid. If the ownership of any such livestock shall not be established within ten (10) days from the time such inspector or other officer shall take the same into possession, such inspector or other officer may have such livestock sold at public sale in any auction house or sales ring at which livestock of this nature are customarily sold and the costs of sale and the costs of keeping the livestock before the sale thereof shall be paid from the sale proceeds and the balance of such proceeds shall be paid to the treasurer of the state of Idaho for deposit in the unclaimed livestock proceeds account.

In the event any such livestock shall be delivered to any sales ring, slaughter facility or auction house for sale prior to the time that possession thereof shall be taken by an officer, then the officer may permit the sale of such livestock at such auction house, slaughter facility or sales ring and impound the proceeds from the sale thereof until the ownership of such proceeds shall be established. [I.C., § 25-1410, as added by 1973, ch. 168, § 20, p. 339; am. and redesign. 1988, ch. 75, § 35, p. 111; am. 1992, ch. 65, § 1, p. 198.]

**Compiler's notes.** This section was formerly compiled as § 25-1410.

Section 2 of S.L. 1992, ch. 65 is compiled as § 25-3301.

**Sec. to sec. ref.** This section is referred to in § 25-1174.

**25-1173. Unclaimed livestock proceeds account.** — There is hereby created in the state treasury an account to be known as the unclaimed livestock proceeds account which shall consist of all money directed by law to be placed therein. The account is appropriated for paying and satisfying such claims as may be allowed against the account by virtue of any law of the state of Idaho. All proceeds from the sale of livestock as provided by section 25-1172, Idaho Code, remaining after payment of the costs of keeping the livestock and the costs of sale, shall be paid to the state



treasurer and shall be deposited into the account. All moneys which shall hereafter be impounded under the provisions of section 25-1172, Idaho Code, to which ownership shall not be established within sixty (60) days after the sale of the livestock from which such proceeds shall be received, shall be paid to the state treasurer and shall be deposited into the account. [I.C., § 25-1411, as added by 1973, ch. 168, § 20, p. 339; am. and redesign. 1988, ch. 75, § 36, p. 111.]

**Compiler's notes.** This section was formerly compiled as § 25-1411.

Former section 25-1411 comprising I.C.A., § 24-1215, as added by 1937, ch. 137, § 1, p.

220, was repealed by S.L. 1973, ch. 168, § 22.

**Sec. to sec. ref.** This section is referred to in § 25-2311.

**25-1174. Hearing for claims to livestock proceeds account.** — Any person claiming to be the owner of any livestock sold under the provisions of section 25-1172, Idaho Code, may claim the sale proceeds placed in the unclaimed livestock proceeds account, and the state brand inspector must inquire into such claim, and may hold a hearing for such purpose giving notice thereof to every claimant thereof at least thirty (30) days before the date set for such hearing and after such hearing if satisfied of any claimant's right thereto, must issue an order granting a certificate to that effect and upon the presentation of the certificate the state controller must draw his warrant on the treasurer for the amount without interest. If no such certificate is presented to the state controller within eighteen (18) months after the date, such money is paid into the treasury of the state of Idaho and such money shall escheat to the state and be apportioned to the public school fund. [I.C., § 25-1412, as added by 1973, ch. 168, § 20, p. 339; am. and redesign. 1988, ch. 75, § 37, p. 111; am. 1994, ch. 180, § 39, p. 420.]

**Compiler's notes.** This section was formerly compiled as § 25-1412.

Former section 25-1412 comprising I.C.A., § 24-1216 as added by 1937, ch. 137, § 1, p. 220, was repealed by S.L. 1973, ch. 168, § 22.

Section 241 of S.L. 1994, ch. 180 provided that such act should become effective on and after the first Monday in January, 1995 [January 2, 1995] if the amendment to the Constitution of Idaho changing the name of the state auditor to state controller [1994 S.J.R. No. 109, p. 1493] was adopted at the general

election held on November 8, 1994. Since such amendment was adopted, the amendment to this section by § 39 of S.L. 1994, ch. 180 became effective January 2, 1995.

Section 38 of S.L. 1988, ch. 75 is compiled as § 25-1180.

Sections 38 and 40 of S.L. 1994, ch. 180 are compiled as §§ 25-1149 and 25-1728, respectively.

**Sec. to sec. ref.** This section is referred to in § 25-2311.

## **25-1175 — 25-1179. [Reserved.]**

**25-1180. Mutilating and counterfeiting brands a misdemeanor.** — It shall be unlawful for any stock grower or other person in this state to change, conceal, deface, disfigure, or obliterate any brand or mark previously branded, impressed or marked on any animal or head of livestock, or put his own, or any other brand upon or over any part of any brand previously branded, upon any animal or head of livestock, and no person must mark or use any counterfeit of any brand or mark provided for in this chapter. Any person violating any of the provisions of this section shall be guilty of a misdemeanor. [1881, p. 295, § 10; am. R.S., § 1178; compiled and

reen. R.C., § 1238; am. 1911, ch. 217, § 9, p. 699; reen. C.L., § 1238; C.S., § 1931; I.C.A., § 24-1015; am. 1937, ch. 135, § 7, p. 216; am. 1973, ch. 168, § 18, p. 339; am. and redesisg. 1988, ch. 75, § 38, p. 111.]

**Compiler's notes.** This section was formerly compiled as § 25-1215.

Section 6 of S.L. 1937, ch. 135 is compiled as § 25-1148.

Section 19 of S.L. 1973, ch. 168 is compiled as § 25-1101; section 20 is compiled as §§ 25-1101, 25-1105, 25-1110, 25-1121, 25-1123 — 25-1126, 25-1170 — 25-1174, 25-1181, 25-1182.

Section 37 of S.L. 1988, ch. 75 is compiled as § 25-1174.

Section 23 of S.L. 1973, ch. 168 reads: "If any provision or provisions of this act shall be held to be unconstitutional, invalid or unenforceable provision or provisions shall be considered severable from the remainder of this act although contained in sections containing other provisions and shall be excluded from this act, and the fact that said provision or

provisions shall be held unconstitutional, invalid or unenforceable shall in no way affect any other provision of this act although contained in the same section."

Section 24 of S.L. 1973, ch. 168 provided that section 14 of the act shall be in full force and effect on the after July 1, 1974, and the remaining sections shall be in full force and effect on and after July 1, 1973.

**Cross ref.** Altering brand with intent to steal or prevent identification, felony, § 25-1901.

Penalty for altering marks and brands a felony, § 25-1901.

Penalty for misdemeanor when other penalty not provided, § 18-113.

**Collateral References.** 3A C.J.S., Animals, §§ 24, 25.

**25-1181. Penalties.** — (1) Any person who shall present false or fraudulent information to obtain a brand inspection certificate shall be guilty of a felony.

(2) Any person who wilfully forges any brand inspection certificate or written permit, or alters the same in any manner, with the intent to defraud another, or with the intent to deceive any state brand inspector or any other law enforcement officer in the state of Idaho, shall be guilty of forgery.

(3) Any person who shall knowingly transport livestock without proper certificate or permit, or knowingly offers for shipment any livestock not his own or without the authority of the owner of said livestock shall be deemed guilty of a misdemeanor.

(4) Any person who shall, without proper brand inspection certificate or written permit, transport livestock in violation of this chapter shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined a sum not to exceed three hundred dollars (\$300) or by imprisonment in the county jail not to exceed six (6) months or be punished by both fine and imprisonment.

(5) Any person who shall refuse to permit inspection of any livestock as required by this chapter, shall be guilty of a misdemeanor and upon conviction thereof shall be fined a sum not to exceed three hundred dollars (\$300) or by imprisonment in the county jail not to exceed six (6) months or be punished by both fine and imprisonment; and provided further, such person may be liable for civil damages to any owner of such livestock injured thereby, plus treble damages and for costs of suit and attorney's fees.

(6) It shall be unlawful for any common carrier to transport livestock within or without the state of Idaho without having had the required brand inspections required by this chapter, and any common carrier who knowingly violates the requirements of this chapter shall be deemed guilty of a misdemeanor and upon conviction thereof, shall be fined a sum not less than



three hundred dollars (\$300) nor more than one thousand dollars (\$1,000); and provided further, that said common carriers may be liable for civil damages to any owner of such livestock who is injured thereby plus treble damages and for costs of suit and attorney's fees. Any person who transports livestock within or without the state of Idaho without having had the brand inspection required by this chapter, and who has not previously violated this section, is guilty of an infraction. Any subsequent violation of this section is a misdemeanor, punishable by a fine not less than three hundred dollars (\$300) nor more than one thousand dollars (\$1,000), or by imprisonment in the county jail not to exceed six (6) months, or by both a fine and imprisonment.

(7) Any person who shall violate any of the rules adopted by the state brand board for the implementation of this chapter, shall be guilty of a misdemeanor and upon conviction thereof shall be fined a sum not to exceed three hundred dollars (\$300) or by imprisonment in the county jail not to exceed six (6) months or be punished by both fine and imprisonment.

(8) It shall be a misdemeanor to brand any livestock with a recorded brand, when such livestock is not owned by the owner or owners of the recorded brand used.

(9) It shall be a felony to brand any livestock with a recorded brand, when such livestock is not owned by the owner or owners of the recorded brand used, for the purpose of committing or facilitating the theft of said livestock. [I.C., § 25-1415, as added by 1973, ch. 168, § 20, p. 339; am. and redesign. 1988, ch. 75, § 39, p. 111; am. 1995, ch. 123, § 1, p. 539; am. 1996, ch. 90, § 4, p. 271; am. 1997, ch. 105, § 3, p. 246.]

**Compiler's notes.** This section was formerly compiled as § 25-1415.

Former section 25-1415 comprising 1947, ch. 72, § 1, p. 115; 1951, ch. 185, § 1, p. 396 was repealed by S.L. 1973, ch. 168, § 22.

Section 21 of S.L. 1973, ch. 168 is compiled as § 25-1736.

Section 22 of S.L. 1973, ch. 168, repealed §§ 25-1211 — 25-1214, 25-1304 and chapters 14 and 15 of title 25, Idaho Code.

Section 23 of S.L. 1973, ch. 168 reads: "If any provision or provisions of this act shall be held to be unconstitutional, invalid or unenforceable provision or provisions shall be considered severable from the remainder of this act although contained in sections containing other provisions and shall be excluded from this act, and the fact that said provision or provisions shall be held unconstitutional, invalid or unenforceable shall in no way affect any other provisions of this act although contained in the same section."

Section 24 of S.L. 1973, ch. 168 provided that section 14 of the act shall be in full force and effect on and after July 1, 1974, and the

remaining sections shall be in full force and effect on and after July 1, 1973.

Section 3 of S.L. 1996, ch. 90 is compiled as § 25-1150.

Section 2 of S.L. 1997, ch. 105 is compiled as § 25-1160.

### **Sentence Upheld.**

Where defendant was convicted under this section and § 25-221A, and where the magistrate pronounced consecutive 60-day jail terms on ten counts, but suspended all but one 60-day period and placed defendant on a two-year term of probation, and where the magistrate also pronounced a \$200 fine, but suspended \$100 of that amount, on each count trial court did not abuse its discretion since the sentence imposed was within the limits prescribed by statute and since defendant previously had been convicted of a brand inspection violation and he falsely denied any prior conviction during the sentencing hearing in the present case. *State v. Summers*, 115 Idaho 768, 769 P.2d 1140 (Ct. App. 1989) (decided under former 25-1415).



**25-1182. Issuance of citations and arrest of violators.** — The state brand inspector, all deputy brand inspectors and all peace officers authorized by the laws of the state of Idaho to enforce brand inspection laws, are authorized and it is hereby made their duty to arrest with or without warrant any person or persons found violating any of the provisions of the brand inspection laws of the state of Idaho when detected in the act of violating such law or laws or found with livestock unlawfully in their possession at the time of such arrest. Arrests made pursuant to the brand inspection laws of the state of Idaho may be affected by:

(1) Taking the offender into custody for immediate appearance before the nearest available magistrate having jurisdiction; or,

(2) Issuing a citation to the offender to appear before a magistrate. Said citation shall bear the date, time and place for the offender's appearance before a magistrate; the name and address of the offender, the offense charged, the approximate location where and the approximate time when the offense was committed and other such essential and descriptive information related to the offense as may be prescribed by the state brand board by rule or regulation adopted by said state brand board. The citation shall be signed by the offender notified to appear and he shall be given a copy thereof and thereupon may be released from custody. A citation shall be issued only by mutual agreement of the arresting officer and the offender as evidenced by both their signatures on said citation. Failure of the offender to appear at the time and place specified in the citation shall constitute a misdemeanor and shall be cause for issuance of a warrant for said offender's arrest.

Whenever any person is given a written citation containing a notice to appear as hereinabove provided, the magistrate shall be a magistrate within the county where the offense charged is alleged to have been committed and who has jurisdiction of the offense, or any other magistrate in any other county with jurisdiction over the alleged offense which is agreed to be more convenient by both the officer and the offender. Whenever an offender is taken immediately before a magistrate as hereinabove provided, it shall be any magistrate within the state of Idaho who has jurisdiction of the alleged offense. [I.C., § 25-1414, as added by 1973, ch. 168, § 20, p. 339; am. and redesisg. 1988, ch. 75, § 40, p. 111.]

**Compiler's notes.** This section was formerly compiled as § 25-1414.

Former section 25-1414 comprising 1943, ch. 159, § 1, p. 322, was repealed by S.L. 1973, ch. 168, § 22.

Section 41 of S.L. 1988, ch. 75 is compiled as § 25-1736.

**Sec. to sec. ref.** This section is referred to in § 40-510.

## CHAPTER 12

### STOCK GROWERS' BRANDS

#### SECTION.

25-1201. [Repealed.]

25-1202 — 25-1205. [Amended and Redesignated.]

25-1206. [Repealed.]

#### SECTION.

25-1207 — 25-1210. [Amended and Redesignated.]

25-1211 — 25-1214. [Repealed.]

25-1215. [Amended and Redesignated.]

**25-1201. Definitions. [Repealed.]**

**Compiler's notes.** This section, which comprised 1905, p. 352, § 1; reen. R.C. & C.L., § 1224; C.S., § 1917; I.C.A., § 24-1001; am. 1973, ch. 168, § 9, p. 339, was repealed by S.L. 1988, ch. 75, § 1.

**25-1202. [Amended and Redesignated.]**

**Compiler's notes.** This section was amended and redesignated as § 25-1140 by § 19 of S.L. 1988, ch. 75.

**25-1202A. [Amended and Redesignated.]**

**Compiler's notes.** This section was amended and redesignated as § 25-1141 by § 20 of S.L. 1988, ch. 75.

**25-1203. [Amended and Redesignated.]**

**Compiler's notes.** This section was amended and redesignated as § 25-1142 by § 21 of S.L. 1988, ch. 75.

**25-1204. [Amended and Redesignated.]**

**Compiler's notes.** This section was amended and redesignated as § 25-1143 by § 22 of S.L. 1988, ch. 75.

**25-1205. [Amended and Redesignated.]**

**Compiler's notes.** This section was amended and redesignated as § 25-1144 by § 23 of S.L. 1988, ch. 75.

**25-1206. Recording certified copy with county recorder. [Repealed.]**

**Compiler's notes.** This section, which comprised 1905, p. 352, §§ 9, 10; am. R.C., § 1230; am. 1911, ch. 217, § 4, p. 697; reen. C.L., § 1230; C.S., § 1922; I.C.A., § 24-1006; am. 1937, ch. 135, § 3, p. 216, was repealed by S.L. 1951, ch. 108, § 2, p. 253.

**25-1207. [Amended and Redesignated.]**

**Compiler's notes.** This section was amended and redesignated as § 25-1145 by § 24 of S.L. 1988, ch. 75.

**25-1208. [Amended and Redesignated.]**

**Compiler's notes.** This section was amended and redesignated as § 25-1146 by § 25 of S.L. 1988, ch. 75.

**25-1209. [Amended and Redesignated.]**

**Compiler's notes.** This section was amended and redesignated as § 25-1147 by § 26 of S.L. 1988, ch. 75.

**25-1210. [Amended and Redesignated.]**

**Compiler's notes.** This section was amended and redesignated as § 25-1148 by § 27 of S.L. 1988, ch. 75.

**25-1211. Brand as evidence of ownership. [Repealed.]**

**Compiler's notes.** This section which comprised S.L. 1905, P. 352, § 14; reen. R.C., § 1234; am. 1911, ch. 217, § 8, p. 698; reen. C.L., § 1234; C.S., § 1927; I.C.A., § 24-1011 was repealed by S.L. 1973, ch. 168, § 22.

**25-1211a. Recorded brand or mark — Certificate. [Repealed.]**

**Compiler's notes.** This section which comprised S.L. 1949, ch. 99, § 1, p. 174 was repealed by S.L. 1973, ch. 168, § 22.

**25-1212, 25-1213. Sheep owner to notify owner of strange sheep — Sale of branded animals. [Repealed.]**

**Compiler's notes.** These sections which comprised S.L. 1905, p. 352, §§ 15, 16; reen. R.C. & C.L., §§ 1235, 1236; C.S., §§ 1928, 1929; I.C.A., §§ 24-1012, 24-1013 were repealed by S.L. 1973, ch. 168, § 22.

**25-1214. Partnership brands. [Repealed.]**

**Compiler's notes.** This section which comprised S.L. 1881, p. 295, § 9; am. R.S., § 1177; reen. R.C. & C.L., § 1237; C.S., § 1930; I.C.A., § 20-1014 was repealed by S.L. 1973, ch. 168, § 22.

**25-1215. [Amended and Redesignated.]**

**Compiler's notes.** This section was amended and redesignated as § 25-1180 by § 38 of S.L. 1988, ch. 75.

**CHAPTER 13****DRIVING FROM RANGE OR HERDING LIVESTOCK****SECTION.**

- 25-1301. Penalty for driving livestock from range — Evidence warranting conviction.  
25-1302. Liability to civil action — Attachment of defendant's livestock.

**SECTION.**

- 25-1303. Prevention of trespass of livestock — Criminal and civil liability.  
25-1304. [Repealed.]  
25-1305. Penalty for violations.



**25-1301. Penalty for driving livestock from range — Evidence warranting conviction.** — Any person, not the owner or entitled to the possession, who knowingly and willfully drives, rides, or leads, or assists to drive, ride or lead or transport by motor vehicle any head of livestock away from its usual range is guilty of a misdemeanor.

Proof that such person was driving, riding or leading or transporting by motor vehicle such livestock more than five (5) miles from its usual range is evidence sufficient to warrant a conviction, unless the evidence produced on the trial shows that the accused acted in good faith and with an innocent purpose. [1881, p. 295, § 13; am. R.S., § 1181; reen. R.C. & C.L., § 1241; am. 1919, ch. 176, § 1, p. 553; C.S., § 1934; I.C.A., § 24-1103; am. 1969, ch. 44, § 1, p. 122.]

**Compiler's notes.** Sections 24-1101, 24-1102, Idaho Code Annotated, were repealed by S.L. 1943, ch. 71, § 1.

**Collateral References.** 3A C.J.S., Animals, §§ 121, 122.

**25-1302. Liability to civil action — Attachment of defendant's livestock.** — Any person who, without the owner's consent, drives, rides, or leads or assists in driving, riding or leading any head of livestock, the property of another, away from its usual or accustomed range is liable in a civil action in a court of competent jurisdiction to the party injured for damages, including the costs of litigation. The party injured may, at the commencement of the action, or during the pendency thereof, have the livestock of the defendant, or such number thereof as are sufficient, attached, seized and held as security for all damages and costs that may be recovered in such action. [1881, p. 295, § 14; am. R.S., § 1182; reen. R.C. & C.L., § 1242; am. 1919, ch. 176, § 2, p. 553; C.S., § 1935; I.C.A., § 24-1104.]

**Cross ref.** Driving stock from public highway and herding the same on occupied land a misdemeanor, § 25-1908.

**Collateral References.** 3A C.J.S., Animals, § 121.

**25-1303. Prevention of trespass of livestock — Criminal and civil liability.** — Any person owning or having charge of any herd or drove of livestock, who drives or moves the same into or through any county in this state, in which the owner thereof is not a resident or landowner, and where the land is owned or is occupied and improved, must prevent such herd or drove from mixing with the livestock belonging in said county, and must also prevent such herd or drove from trespassing on land in the possession of any actual settler, and used by him for grazing purposes, or for the growing of grain, hay or other crops, or injuring any ditches owned or used by such settler. If any owner or person in charge of any such herd or drove of livestock wilfully or negligently injures any resident of this state by driving or moving such herd or drove of livestock from any public highway, and herding or grazing the same on land occupied and improved by any settler in possession of the same, he is guilty of a misdemeanor; and is also liable in a civil action to the party injured for the damages by him sustained. [1881, p. 295, § 15; am. R.S., § 1183; reen. R.C. & C.L., § 1243; C.S., § 1936; I.C.A., § 24-1105.]

**Cross ref.** Similar provisions, § 25-1908.

**Collateral References.** 3A C.J.S., Animals, § 241.

### **25-1304. Powers and duties of brand inspector. [Repealed.]**

**Compiler's notes.** This section which comprised 1881, p. 295, § 16; am. R.S., § 1184; reen. R.C. & C.L., § 1244; C.S., § 1937;

I.C.A., § 24-1106 was repealed by S.L. 1973, ch. 168, § 22.

**25-1305. Penalty for violations.** — Any person violating any of the provisions of this chapter is guilty of a misdemeanor. [1881, p. 295, § 17; am. R.S., § 1185; reen. R.C. & C.L., § 1245; C.S., § 1938; I.C.A., § 24-1107.]

**Cross ref.** Offenses in general, §§ 25-1901, 25-1903 — 25-1909.

Penalty for misdemeanor when not otherwise provided, § 18-113.

## **CHAPTER 14**

### **IDAHO INSPECTION OF BRANDS**

#### **SECTION.**

25-1401 — 25-1415. [Amended and Redesignated.]

25-1416 — 25-1416c. [Repealed.]

### **25-1401. [Amended and Redesignated.]**

**Compiler's notes.** This section was amended and redesignated as § 25-1101 by § 2 of S.L. 1988, ch. 75.

### **25-1402. [Amended and Redesignated.]**

**Compiler's notes.** This section was amended and redesignated as § 25-1121 by § 13 of S.L. 1988, ch. 75.

### **25-1402A. [Amended and Redesignated.]**

**Compiler's notes.** This section was amended and redesignated as § 25-1122 by § 14 of S.L. 1988, ch. 75.

### **25-1403. [Amended and Redesignated.]**

**Compiler's notes.** This section was amended and redesignated as § 25-1123 by § 15 of S.L. 1988, ch. 75.

### **25-1404. [Amended and Redesignated.]**

**Compiler's notes.** This section was amended and redesignated as § 25-1124 by § 16 of S.L. 1988, ch. 75.

**25-1405. [Amended and Redesignated.]**

**Compiler's notes.** This section was amended and redesignated as § 25-1125 by § 17 of S.L. 1988, ch. 75.

**25-1406. [Amended and Redesignated.]**

**Compiler's notes.** This section was amended and redesignated as § 25-1126 by § 18 of S.L. 1988, ch. 75.

**25-1407. [Amended and Redesignated.]**

**Compiler's notes.** This section was amended and redesignated as § 25-1105 by § 6 of S.L. 1988, ch. 75.

**25-1408. [Amended and Redesignated.]**

**Compiler's notes.** This section was amended and redesignated as § 25-1171 by § 34 of S.L. 1988, ch. 75.

**25-1409. [Amended and Redesignated.]**

**Compiler's notes.** This section was amended and redesignated as § 25-1170 by § 33 of S.L. 1988, ch. 75.

**25-1410. [Amended and Redesignated.]**

**Compiler's notes.** This section was amended and redesignated as § 25-1172 by § 35 of S.L. 1988, ch. 75.

**25-1411. [Amended and Redesignated.]**

**Compiler's notes.** This section was amended and redesignated as § 25-1173 by § 36 of S.L. 1988, ch. 75.

**25-1412. [Amended and Redesignated.]**

**Compiler's notes.** This section was amended and redesignated as § 25-1174 by § 37 of S.L. 1988, ch. 75.

**25-1413. [Amended and Redesignated.]**

**Compiler's notes.** This section was amended and redesignated as § 25-1110 by § 11 of S.L. 1988, ch. 75.



**25-1414. [Amended and Redesignated.]**

**Compiler's notes.** This section was amended and redesignated as § 25-1182 by § 40 of S.L. 1988, ch. 75.

**25-1415. [Amended and Redesignated.]**

**Compiler's notes.** This section was amended and redesignated as § 25-1181 by § 39 of S.L. 1988, ch. 75.

**25-1416. Transfer of title for livestock. [Repealed.]**

**Compiler's notes.** This section, which comprised I.C., § 25-1416, as added by 1977, ch. 205, § 1, p. 569, was repealed by S.L. 1988, ch. 75, § 1.

**25-1416a — 25-1416c. [Repealed.]**

**Compiler's notes.** These sections comprising 1951, ch. 185, §§ 2-4, p. 396 were repealed by S.L. 1973, ch. 168, § 22.

**CHAPTER 15****INSPECTION OF BRANDS ACT OF 1943****SECTION.**

25-1501 — 25-1514. [Repealed.]

**25-1501 — 25-1514. Inspection of brands — Requirements regarding transportation — Certificates — Separability — Penalties and liability. [Repealed.]**

**Compiler's notes.** These sections which compromised S.L. 1905, p. 369, § 2; R.C., § 1247; 1917, ch. 101, § 2, p. 376; C.L., § 1247; C.S., § 1940; I.C.A., § 24-1202; S.L. 1943, ch. 72, §§ 1-11, 13, 14, p. 151; 1947, ch. 89, § 1, p. 153; 1951, ch. 145, § 1, p. 338; 1951, ch. 201, § 1, p. 429; 1953, ch. 51, § 1, p. 68, were repealed by S.L. 1973, ch. 168, § 22.

**CHAPTER 16****RECORD OF BRANDS ON SLAUGHTERED CATTLE****SECTION.**

25-1601. Record of slaughtered cattle — Penalty for violation.

**25-1601. Record of slaughtered cattle — Penalty for violation. —** Any persons engaged in the business of slaughtering cattle, must keep at their place of business a book in which they must enter daily the number and class of cattle slaughtered, the name of the person or persons from whom said cattle were purchased, and the marks and brands of such cattle. Said book must be kept ready at all times for the inspection of any person who may desire to examine the same. Any person violating the provisions

hereof shall be guilty of a misdemeanor. [1877, p. 36, § 1; am. R.S., § 1195; reen. R.C. & C.L., § 1255; C.S., § 1947; I.C.A., § 24-1301; am. 1941, ch. 51, § 1, p. 109.]

**Compiler's notes.** Sections 24-1302, 24-1303, Idaho Code Annotated, were repealed by S.L. 1941, ch. 51, § 2, p. 109.

Sections 24-1401—24-1405, Idaho Code Annotated, providing for auctioneers' registers, were repealed by S.L. 1943, ch. 113, § 1, p. 221.

**Cross ref.** Inspection of slaughterhouses, etc., § 37-1901 et seq.

Penalty for misdemeanor when not otherwise provided, § 18-113.

Sheriff to cooperate with Idaho state police in enforcement of brand inspection laws, § 31-2202.

Slaughterhouses and meat products, sanitary regulations, § 37-1901 et seq.

State police to enforce brand inspection laws, § 67-2905.

## CHAPTER 17

### LIVESTOCK MARKETS

#### SECTION.

25-1701 — 25-1718. [Repealed.]

25-1719. Short title.

25-1720. Statement of purpose.

25-1721. Definitions of terms.

25-1722. Exemptions.

25-1723. Administration of act.

25-1724. Market charter and application — Fees, charter and hearing.

25-1725. Notice of hearing on application.

25-1726. Hearing on application.

25-1727. [Repealed.]

25-1728. Market charter fee — Public livestock market fund — Appropriation — Payment of claims.

25-1729. Transfers of market charters — Hearing and charter fees.

#### SECTION.

25-1730. Bond of applicant.

25-1731. Records of charter holder.

25-1732. Investigation of actions of market charter holders — Hearings on complaints — Witnesses — Suspension or revocation of market charters — Violation of Packers and Stockyards Act of 1921 — Injunction — Hearing — Audit.

25-1733. Appeals from decisions of director.

25-1734. Penalties.

25-1735. Licensed weighmaster.

25-1736. Brand inspection.

25-1737. Sanitation.

### 25-1701 — 25-1718. Livestock sales rings, license and bond — Rules and regulations — Enforcement of act — Sanitation — Penalties. [Repealed.]

**Compiler's notes.** These sections comprising S.L. 1947, ch. 124, §§ 1-17, p. 285; 1949, ch. 98, § 1, p. 174; 1949, ch. 149, § 1, p. 174;

1959, ch. 92, § 1, p. 204, were repealed by S.L. 1961, ch. 201, § 21.

**25-1719. Short title.** — This act shall be known and cited as the "Idaho Public Livestock Market Development Act." [1961, ch. 201, § 1, p. 310.]

**Compiler's notes.** The words "this act" refer to S.L. 1961, ch. 201, compiled as §§ 25-1719—25-1737.

**25-1720. Statement of purpose.** — It is hereby declared to be the policy of the state of Idaho, and the purpose of this act, to encourage, stimulate and stabilize the agricultural economy of the state in general, and the livestock economy in particular, by encouraging the construction, development and productive operation of public livestock markets as key industries of the state and those markets' particular trade areas, with all

benefits of fully open, free, competitive factors, in respect to sales and purchases of livestock. [1961, ch. 201, § 2, p. 310.]

**Compiler's notes.** For words "this act" see compiler's notes, § 25-1719.

**25-1721. Definitions of terms.** — The following words and phrases as used in this act, unless the context otherwise requires, shall have the meanings respectively ascribed to them in this section.

(a) "Persons" shall include any individual, firm, association, partnership or corporation.

(b) "Department" means the department of agriculture.

(c) "Director" means the director of the department of agriculture.

(d) "Livestock" means and includes cattle, calves, horses, mules and swine.

(e) "Public livestock market" means:

Any place, establishment or facility commonly known as a "livestock market," "livestock auction market," "sales ring," "stockyard," or the like, consisting of pens, or other inclosures, and their appurtenances, in which livestock is received, held, sold or kept for sale or shipment, which is conducted or operated for compensation or profit as a public market for livestock.

Marketing or trading, including the transmission of market information, bids, and offers, may be facilitated by computer, video, or any other electronic device.

(f) "Market charter" means the charter for public livestock market operation authorized to be issued under the provisions of this act.

(g) "Livestock market operator" means any person engaged in the business of conducting or operating a public livestock market, whether personally or through agents or employees. [1961, ch. 201, § 3, p. 310; am. 1974, ch. 18, § 147, p. 364; am. 1985, ch. 238, § 1, p. 564; am. 1994, ch. 314, § 1, p. 998.]

**Compiler's notes.** For words "this act" see compiler's notes, § 25-1719.

Section 146 of S.L. 1974, ch. 18 is compiled as § 25-812.

Section 2 of S.L. 1985, ch. 238 is compiled as § 25-1724.

Section 2 of S.L. 1994, ch. 314 is compiled as § 25-1724.

**Sec. to sec. ref.** This section is referred to in §§ 25-1724, 25-1725.

**25-1722. Exemptions.** — This act shall not be construed to include as a public livestock market:

(a) Any place or operation where future farmers or 4-H groups or private fairs conduct sales of livestock.

(b) Any place or operation conducted for a dispersal sale of the livestock of a farmer, dairyman, livestock breeder or feeder who is discontinuing said business and no other livestock is sold or offered for sale.

(c) Any place or operation where a breeder or an association of breeders of livestock assemble and offer for sale and sell under their own management any livestock when such breeders shall assume all responsibility of



such sale and the title of livestock sold. This shall apply to all purebred livestock association sales.

(d) All sales of livestock by any generally recognized statewide association or associations composed of persons engaged in the production in Idaho of cattle, calves, sheep, mules, horses, swine, or goats.

(e) Sales of livestock by any nonprofit cooperative association, corporation sole or religious, fraternal or benevolent corporation, provided such association or corporation complies with regulations of the director in connection with such sale and such sales are not held in the regular course of business of such corporation or association.

(f) Any Idaho auction market operated by an Idaho licensed auctioneer selling not more than twenty (20) animals a week or more than eighty (80) animals a month, provided such an auction market is bonded under the provisions of the Federal Packers and Stockyards Act, of 1921, as amended. [1961, ch. 201, § 4, p. 310; am. 1963, ch. 130, § 1, p. 382; am. 1965, ch. 138, § 1, p. 271; am. 1974, ch. 18, § 148, p. 364.]

**Compiler's notes.** For words "this act" see compiler's notes, § 25-1719.

U.S.C. §§ 181-183, 191-195, 201-217, 221-228, 229.

The Packers and Stockyards Act of 1921, referred to in this section, is compiled as 7

Section 2 of S.L. 1963, ch. 130 declared an emergency. Approved March 18, 1963.

**25-1723. Administration of act.** — The director is hereby vested with power and authority, and it is hereby made his duty, to:

(a) Administer the provisions of this act in respect to the issuances, suspensions and revocations of market charters.

(b) Prescribe by general order, or otherwise, rules and regulations in conformity with this act, applicable to its efficient and effective administration. [1961, ch. 201, § 5, p. 310; am. 1974, ch. 18, § 149, p. 364.]

**Compiler's notes.** For words "this act" see compiler's notes, § 25-1719.

**25-1724. Market charter and application — Fees, charter and hearing.** — No person shall conduct or operate a public livestock market unless and until he has a market charter therefor, upon which the current annual market charter fee has been paid. Any person making application for such market charter shall do so to the director in writing, verified by the applicant, in the form as prescribed by the director, showing the following:

(a) The name and address of the applicant, with a statement of the names and addresses of all persons having any financial interest in the applicant and the amount of such interest. This statement shall include the legal names of all members of a partnership; the officers and members of the governing board of an association; and five (5) principal stockholders of a corporation. If, during the period of a market charter issued hereunder, any change shall take place in the personnel identified herein, the holder of the market charter shall forthwith make a verified report of any such change to the director.

(b) Financial responsibility of the applicant in the form of a statement of all assets and liabilities.

(c) A legal description of the property and its exact location with a complete description of the facilities proposed to be used in connection with such public livestock market.

(d) The schedule of charges applicant proposes to charge for all services proposed to be rendered.

(e) A detailed statement of the facts upon which the applicant relies showing the general confines of the trade area proposed to be served by such public livestock market, the benefits to be derived by the livestock industry and the services proposed to be rendered.

Such application shall be accompanied by the annual charter fee as prescribed in section 25-1728, Idaho Code. In addition, the application shall be accompanied by a hearing fee of five hundred dollars (\$500) which shall not be returnable to the applicant. Said annual charter fee and hearing fee shall be remitted separately. The director shall remit said hearing fee to the state treasurer of the state of Idaho to be credited to the "Public Livestock Market Fund." [1961, ch. 201, § 6, p. 310; am. 1965, ch. 65, § 1, p. 100; am. 1974, ch. 18, § 150, p. 364; am. 1985, ch. 238, § 2, p. 564; am. 1994, ch. 314, § 2, p. 998.]

**Compiler's notes.** Section 1 of S.L. 1985, ch. 238 is compiled as § 25-1721.

Section 1 of S.L. 1994, ch. 314 is compiled as § 25-1721.

**25-1725. Notice of hearing on application.** — Upon the filing of such application, the director shall fix a reasonable time for the hearing thereon in the city itself, or the nearest city, where the public livestock market is proposed to be located. The director forthwith shall cause notice of the time and place of hearing, to be served by mail not less than fifteen (15) days prior to such hearing upon the following:

(a) All duly organized statewide livestock associations in the state who have filed written notice with the director of a request to receive notice of such hearings and such other livestock associations as in the opinion of the director would be interested in such application.

(b) The operators of all public livestock markets in the state.

The director shall give further notice of such hearing by publication of the notice thereof once in a daily or weekly newspaper circulated in the city or town where such hearing is to be held, as in the opinion of the director will give public notice of such time and place of hearing to persons interested therein. [1961, ch. 201, § 7, p. 310; am. 1965, ch. 65, § 2, p. 100; am. 1974, ch. 18, § 151, p. 364; am. 1985, ch. 238, § 3, p. 564; am. 1994, ch. 314, § 3, p. 998.]

**Compiler's notes.** Section 4 of S.L. 1985, ch. 238 was repealed.

Section 4 of S.L. 1994, ch. 314 contained a repeal.

**Sec. to sec. ref.** This section is referred to in § 25-1729.



**25-1726. Hearing on application.** — A hearing shall be conducted by the director. If after a hearing upon such application at which interested persons may formally appear in support or opposition thereto, the director finds from the evidence presented that such public livestock market for which a market charter is sought would beneficially serve the livestock economy, such market charter shall be issued the applicant. In determining whether or not the application should be granted or denied, the director shall give reasonable consideration to:

(a) The ability of the applicant to comply with that certain act of the congress of the United States known as the Packers and Stockyards Act, as amended (7 U.S.C. 181, et seq.).

(b) The financial stability, business integrity and fiduciary responsibility of the applicant.

(c) The livestock industry marketing benefits to be derived from the establishment and operation of the public livestock market proposed in the application.

(d) The adequacy of the facilities set forth in the application, to permit the performance of market services proposed in the application.

(e) The present market services elsewhere available to the trade area proposed to be served.

(f) Whether the proposed public livestock market would be permanent and continuous.

(g) The economic feasibility of the proposed market services based on competent evidence in respect to such aspects.

(h) Proper facilities for health inspection and testing of livestock. [1961, ch. 201, § 8, p. 310; am. 1974, ch. 18 § 152, p. 364.]

**Compiler's notes.** Section 153 of S.L. 1974, ch. 18 is compiled as § 25-1728.

## **25-1727. Existing operations. [Repealed.]**

**Compiler's notes.** Former § 25-1727, by S.L. 1994, ch. 314, § 4, effective July 1, which comprised 1961, ch. 201, § 9, p. 310; 1994. am. 1985, ch. 238, § 4, p. 564, was repealed

**25-1728. Market charter fee — Public livestock market fund — Appropriation — Payment of claims.** — (1) Every livestock market operator shall pay annually, on or before May 1, a market charter fee established by rules of the director but not in excess of two hundred dollars (\$200) to the director for each public livestock market operated by him, which payment shall constitute a renewal of his license for one (1) year.

(2) The director shall promptly remit said fees to the state treasurer of the state of Idaho and the sums so paid under the provisions of this act shall be held by the state treasurer as a separate fund to be known as the "Public Livestock Market Fund," which said fund is hereby created by this act. The state controller is hereby authorized, upon presentation of the proper vouchers or claims against said fund, approved by the director and the state board of examiners, as provided by law, to draw his warrant upon said fund.



(3) All moneys in or hereafter to come into said fund are hereby appropriated to said director for the purpose of carrying out the objects of this act and to pay all costs and expenses heretofore or hereafter incurred therein or connected therewith. For the purpose of carrying out the objects of this act, and in the exercise of the powers therein granted, and duties hereby imposed, the director shall have power to make orders concerning the disbursement of said fund. [1961, ch. 201, § 10, p. 310; am. 1965, ch. 65, § 3, p. 100; am. 1974, ch. 18, § 153, p. 364; am. 1994, ch. 180, § 40, p. 420.]

**Compiler's notes.** Section 241 of S.L. 1994, ch. 180 provided that such act should become effective on and after the first Monday in January, 1995 [January 2, 1995] if the amendment to the Constitution of Idaho changing the name of the state auditor to state controller [1994 S.J.R. No. 109, p. 1493] was adopted at the general election held on November 8, 1994. Since such amendment was adopted, the amendment to this section by § 40 of S.L. 1994, ch. 180 became effective January 2, 1995.

For words "this act" see compiler's notes, § 25-1719.

Section 152 of S.L. 1974, ch. 18 is compiled as § 25-1726.

Sections 39 and 41 of S.L. 1994, ch. 180 are compiled as §§ 25-1174 and 25-3111, respectively.

Section 241 of S.L. 1994, ch. 180 provided: "This act shall be in full force and effect on and after the first Monday of January, 1995, if the state board of canvassers has certified that an amendment to the Constitution of the State of Idaho has been adopted at the general election of 1994 to change the name of the state auditor to state controller."

**Sec. to sec. ref.** This section is referred to in § 25-1724.

**25-1729. Transfers of market charters — Hearing and charter fees.** — Each market charter is personal to the holder and the facilities covered thereby, and transferable only upon application in the same form and manner as new applications for such market charters. A change in the membership of a partnership or association, or the sale or transfer, directly or indirectly, of a controlling interest in the stock ownership of a corporate market charter holder shall be deemed a transfer of the market charter, subject to the requirements of this section.

Any transfer of a market charter shall be accompanied by a processing fee of one hundred dollars (\$100), which sum shall not be returnable to the applicant and which sum shall be remitted by the director to the public livestock market fund. Each such application shall also be accompanied by a separate remittance of the annual charter fee. If within ten (10) days after notice to those persons to whom notice is required to be given by section 25-1725, Idaho Code, a request for a hearing is not made by such a person, the director may transfer a market charter without a hearing if he finds that such a transfer meets the conditions required for a new charter but should a hearing be necessary, an additional fee of one hundred fifty dollars (\$150) shall be remitted to the director before the proceedings shall begin. [1961, ch. 201, § 11, p. 310; am. 1965, ch. 65, § 4, p. 100; am. 1967, ch. 221, § 1, p. 667; am. 1974, ch. 18, § 154, p. 364; am. 1985, ch. 238, § 5, p. 564.]

**Compiler's notes.** Section 2 of S.L. 1967, ch. 221 is compiled as § 25-1732.

Section 4 of S.L. 1985, ch. 238 was repealed.

**25-1730. Bond of applicant.** — No market charter or renewal of market charter shall be issued until the applicant shall have executed a surety bond as required under the provisions of that certain act of the congress of the United States known as the Packers and Stockyards Act, as amended (7 USC 181, et seq.) for market agencies selling on commission. A certified copy of such bond in full force and effect as on file with the United States department of agriculture shall be filed with the director and shall satisfy the requirements of this section. [1961, ch. 201, § 12, p. 310; am. 1974, ch. 18, § 155, p. 364.]

**25-1731. Records of charter holder.** — Every market charter holder under this act shall keep an accurate record of all transactions conducted in the ordinary course of his business. Such records shall be available for the examination of the director, or his duly authorized representative, in respect to a market charter issued under the provisions of this act. [1961, ch. 201, § 13, p. 310; am. 1974, ch. 18, § 156, p. 364.]

**Compiler's notes.** For words "this act" see compiler's notes, § 25-1719.

**25-1732. Investigation of actions of market charter holders — Hearings on complaints — Witnesses — Suspension or revocation of market charters — Violation of Packers and Stockyards Act of 1921 — Injunction — Hearing — Audit.** — The director may, upon his own motion, whenever he has reason to believe the provisions of this act have been violated, or upon verified complaint of any person in writing investigate the actions of any market charter holder, and if he finds probable cause to do so, shall file a complaint against the market charter holder which shall be set down for hearing before the director upon fifteen (15) days' notice served upon such market charter holder either by personal service upon him or by registered mail or telegram prior to such hearing.

The director shall have the power to administer oaths, certify to all official acts and shall have the power to subpoena any person in this state as a witness, to compel the producing of books and papers and to take the testimony of any person on deposition in the same manner as is prescribed by law in the procedure before the courts of this state in civil cases. Processes issued by the director shall extend to all parts of the state and may be served by any person authorized to serve processes. Each witness that shall appear by the order of the director at any hearing shall receive for his attendance the same fees and mileage allowed by law to witnesses in civil cases appearing in the district court, which amount shall be paid by the party at whose request such witness is subpoenaed. When any witness has not been required to attend at the request of any party, but subpoenaed by the director, his fees and mileage shall be paid by the director in the same manner as other expenses of the director are paid.

All powers of the director herein enumerated in respect to administering oaths, power of subpoena, etc., in hearings on complaints shall likewise be applicable to hearings held on applications for the issuance of a market charter.



Formal finding by the director after due hearing that any market charter holder:

(a) Has ceased to conduct a public livestock market business for at least twelve (12) months; or

(b) Has been guilty of fraud or misrepresentation as to the titles, charges, number, brands, weights, proceeds of sale or ownership of livestock; or

(c) Has violated any of the provisions of this act; or

(d) Has violated any of the rules or regulations adopted and published by the director; or

(e) Has violated any of the provisions of the United States Packers and Stockyards Act, of 1921, as amended, or regulations relating thereto, shall be deemed a sufficient cause for the suspension or revocation of the market charter of the offending public livestock market operator. Provided, however, that if the director has reasonable cause to believe that a market operator has violated this act or said Packers and Stockyards Act, of 1921, as amended, or regulations pertaining thereto, it may petition the district court of the district in which said market is located to enjoin such violation by filing a verified complaint setting forth the acts constituting such violation. The court, if satisfied from such complaint that the act or acts complained of have been or are being or are about to be committed, may issue a temporary writ without notice or bond enjoining the defendant from operating said market pending a hearing of the director but no longer than twenty-one (21) days. An audit by the packers and stockyards division of the United States department of agriculture of said market shall be prima facie evidence of the facts therein contained. The director shall only use such audit or audits approved by the packers and stockyards division of the United States department of agriculture. [1961, ch. 201, § 14, p. 310; am. 1965, ch. 65, § 5, p. 100; am. 1967, ch. 221, § 2, p. 667; am. 1974, ch. 18, § 157, p. 364.]

**Compiler's notes.** For words "this act" see compiler's notes, § 25-1719.

The Packers and Stockyards Act of 1921, referred to in this section, is compiled as 7 U.S.C. §§ 181-183, 191-195, 201-217, 221-228, 229.

Sections 1 and 3 of S.L. 1967, ch. 221 are compiled as §§ 25-1729 and 25-1737, respectively.

**25-1733. Appeals from decisions of director.** — The director shall keep a complete transcript of all proceedings and evidence presented in any hearing before him. The applicant for a market charter, or any protestant formally appearing in the hearing before the director for such market charter, or the holder of any market charter suspended or revoked, or any party to a transfer application, may appeal to the district court of the county in which the proposed public livestock market is to be located, or in which the market charter holder has his public livestock market, by giving notice of such appeal in writing to the director within fifteen (15) days after receiving notice by registered mail of the director's decision, and within said time filing a bond with the clerk of said district court in the sum of five hundred dollars (\$500) to be approved by the clerk of said court as legally sufficient, conditioned to pay all costs that may be awarded against such



party in the event of an adverse decision, or the decision of the director being affirmed or upheld. Within thirty (30) days after such decision or within such additional time as the district court shall allow upon good cause shown, but not exceeding sixty (60) days after said decision, the appealing party shall file with the clerk of said district court a transcript of the testimony and proof presented to the director including notice of appeal, complaint, pleadings, notices, motions and other papers filed with the director duly certified by him. Cost of preparing such transcript shall be paid by the appealing party. In case of suspension or revocation of a market charter the filing of such notice and bond shall stay the order of the director until the final determination of the appeal. If the appealing party shall fail to perfect his appeal or file said transcript as herein provided, said stay shall automatically terminate. The hearing on appeal shall be had summarily and solely upon the record of the proceedings before the director, in the matter in which the appeal is taken and upon which his decision was rendered, and there shall not be any additional evidence introduced or anything in the nature of a trial de novo. The court shall not substitute its discretion for that of the director but shall determine whether the director acted capriciously, arbitrarily, or abused his discretion and whether he acted according to law. Appeals from judgments of the district court may be taken to the Supreme Court in the same manner as appeals are taken in civil actions. [1961, ch. 201, § 15, p. 310; am. 1974, ch. 18, § 158, p. 364.]

**Compiler's notes.** Section 159 of S.L. 1974, ch. 18 is compiled as § 25-1737.

**25-1734. Penalties.** — Any person who shall violate any provisions or requirement of this act shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than \$200 nor more than \$1,000, or by imprisonment in the county jail for a period not exceeding 30 days, or by both such fine and imprisonment. Each day any person operates or conducts a public livestock market in the state without a charter as prescribed in this act shall be considered a separate offense. The board is empowered to institute proceedings to enjoin the operation of a public livestock market if the person sought to be enjoined is operating a public livestock market without a market charter in good standing as provided in this act. [1961, ch. 201, § 16, p. 310.]

**Compiler's notes.** For words "this act" see compiler's notes, § 25-1719. and now, probably should be the "director of the department of agriculture." See § 25-1721.  
The term "board" as used in this section, referred to the public livestock market board

**25-1735. Licensed weighmaster.** — No market charter or renewal charter to establish or operate any public livestock market within the state of Idaho shall be issued nor shall any duly licensed public livestock market within this state continue to operate unless the livestock handled by said public livestock market shall be weighed by a licensed weighmaster. [1961, ch. 201, § 17, p. 310.]

**25-1736. Brand inspection.** — Every livestock market operator engaged in the operation of a public livestock market within the state of Idaho shall cause brand inspection to be made in such manner as the state brand board shall prescribe, of all livestock assembled at such public livestock market for either public or private sale, and shall provide facilities for such brand inspection, such facilities to consist of a tagging or holding chute so as to permit readily accessible brand inspection, and shall pay to the office of the state brand inspector fees and charges per head as determined according to the provisions of section 25-1160, Idaho Code. [1961, ch. 201, § 18, p. 310; am. 1969, ch. 190, § 2, p. 559; am. 1973, ch. 168, § 21, p. 339; am. 1976, ch. 180, § 2, p. 652; am. 1988, ch. 75, § 41, p. 111.]

**Compiler's notes.** Section 20 of S.L. 1973, ch. 168 is compiled herein as §§ 25-1101, 25-1105, 25-1121, 25-1123 — 25-1126, 25-1170 — 25-1174, 25-1181, 25-1182.

Section 1 of S.L. 1976, ch. 180 is compiled herein as § 25-1160.

Sections 40 and 42 of S.L. 1988, ch. 75 are compiled as §§ 25-1182 and 25-2311, respectively.

Section 22 of S.L. 1973, ch. 168 repealed §§ 25-1211 — 25-1214, 25-1304 and chapters 14 and 15 of title 25, Idaho Code.

Section 23 of S.L. 1973, ch. 168 reads: "If any provision or provisions of this act shall be held to be unconstitutional, invalid or unenforceable provision or provisions shall be con-

sidered severable from the remainder of this act although contained in sections containing other provisions and shall be excluded from this act, and the fact that said provision or provisions shall be held unconstitutional, invalid or unenforceable shall in no way affect any other provision of this act although contained in the same section."

Section 3 of S.L. 1976, ch. 180 declared an emergency. Approved March 19, 1976.

Section 24 of S.L. 1973, ch. 168, provided that section 14 of the act shall be in full force and effect on and after July 1, 1974, and the remaining sections shall be in full force and effect on and after July 1, 1973.

**25-1737. Sanitation.** — Every public livestock market shall be maintained in a sanitary condition conforming to standards established by rules of the director of the department of agriculture. [1961, ch. 201, § 19, p. 310; am. 1967, ch. 221, § 3, p. 667; am. 1974, ch. 18, § 159, p. 364.]

**Compiler's notes.** Section 2 of S.L. 1967, ch. 221 is compiled as § 25-1732.

Sections 158 and 160 of S.L. 1974, ch. 18, are compiled as §§ 25-1733 and 25-2716, respectively.

Section 21 of S.L. 1961, ch. 201 repealed §§ 25-1701 — 25-1718 of the Idaho Code.

Section 20 of S.L. 1961, ch. 201 read: "The provisions of this act are hereby declared

separable and if any section, clause or phrase thereof is hereafter declared unconstitutional, the same shall not affect the validity of the remaining portions of this act."

Section 22 of S.L. 1961, ch. 201 declared an emergency. Approved March 11, 1961.

Section 263 of S.L. 1974, ch. 18 provided the act should take effect on and after July 1, 1974.

#### DECISIONS UNDER PRIOR LAW

##### ANALYSIS

Amount of damages.

Duty of salesyard.

Instruction to jury.

Liability of salesyard and veterinarian.

Negligence per se.

##### Amount of Damages.

The refusal of the trial court to grant defendant's motion for a directed verdict on the grounds that plaintiff wholly failed to prove the amount of his damages was without merit

where there was ample evidence of the value of the hogs that died and of other expenses to support the verdict. *Anderson v. Blackfoot Livestock Comm'n Co.*, 85 Idaho 64, 375 P.2d 704 (1962).

##### Duty of Salesyard.

That the regulations issued by the director of the bureau of animal industry imposed a duty on the part of the defendant company to vaccinate or inoculate hogs in compliance therewith cannot be questioned. The fact that



the defendant itself did not commit the acts or omissions with which this case is concerned does not relieve it from responsibility imposed by regulations. *Anderson v. Blackfoot Livestock Comm'n Co.*, 85 Idaho 64, 375 P.2d 704 (1962).

#### **Instruction to Jury.**

It was unnecessary to instruct the jury on the law covering liability of a public official when defendant veterinarian was not acting in the capacity of a public official but in his capacity as a veterinarian in connection with the vaccination of the hogs purchased by plaintiff; therefore, it was not error to refuse to give this instruction. *Anderson v. Blackfoot Livestock Comm'n Co.*, 85 Idaho 64, 375 P.2d 704 (1962).

Where a veterinarian assigned or working at a salesyard was not acting in the capacity of a public official in connection with the vaccination of hogs sold to the plaintiff, it was not necessary that an instruction be given to the jury embracing the law of liability of agents of the state of Idaho or of public officials. *Anderson v. Blackfoot Livestock Comm'n Co.*, 85 Idaho 64, 375 P.2d 704 (1962).

An instruction proposing to instruct the jury as to the law concerning violation of statutes and regulations, in this case a regulation issued by the director of the bureau of animal industry, and to inform them that the question of whether the statute or regulation

was violated and whether the violation resulted in and was the proximate cause of plaintiff's injuries, his hogs dying of the cholera, were questions that the jury must determine, was not erroneous. *Anderson v. Blackfoot Livestock Comm'n Co.*, 85 Idaho 64, 375 P.2d 704 (1962).

#### **Liability of Salesyard and Veterinarian.**

Contention of the veterinarian defendant that he was acting as a public official in being placed at the hog salesyard was groundless in view of the fact that the state of Idaho did not assume responsibility of treating the hogs for hog cholera, leaving that to the salesyard, that the fee charged for vaccination was established by the veterinarian and the collection of the fee from the purchaser by agreement between the veterinarian and salesyard, the veterinarian acting not as a public official but in a private capacity and for private gain. *Anderson v. Blackfoot Livestock Comm'n Co.*, 85 Idaho 64, 375 P.2d 704 (1962).

#### **Negligence Per Se.**

When the veterinarian at a salesyard undertook the task of vaccinating the hogs plaintiff purchased, he was under a duty to comply with the regulatory requirements issued by the director of the bureau of animal industry. Failure to comply with the regulations constitutes negligence per se. *Anderson v. Blackfoot Livestock Comm'n Co.*, 85 Idaho 64, 375 P.2d 704 (1962).

## **CHAPTER 18**

### **POULTRY BRANDS**

#### **SECTION.**

25-1801 — 25-1805. [Repealed.]

### **25-1801 — 25-1805. Poultry brands. [Repealed.]**

**Compiler's notes.** These sections, which comprised S.L. 1929, ch. 95, §§ 1-5, p. 157; I.C.A., §§ 24-1501 — 24-1505; 1933, ch. 173,

§ 3, p. 314, were repealed by S.L. 1991, ch. 37, § 1.

## **CHAPTER 19**

### **MISCELLANEOUS OFFENSES RELATING TO LIVESTOCK**

#### **SECTION.**

25-1901. Altering marks and brands.  
25-1902. [Repealed.]  
25-1903. Use or possession of running iron.  
25-1904. [Repealed.]  
25-1905. Removal of hides from carcasses.  
25-1906. Slaughtering unbranded cattle.  
25-1907. Grazing sheep on cattle range.

#### **SECTION.**

25-1908. Grazing stock on improved land.  
25-1909. Stealing services of bull.  
25-1910. Civil damages and other penalties upon theft or unlawful destruction of furbearing animals raised for commercial purposes or livestock.



**25-1901. Altering marks and brands.** — Every person who marks or brands, alters, conceals, disfigures, obliterates, or defaces the mark or brand of any horse, mare, colt, jack, jennet, mule, bull, ox, steer, cow, calf, sheep, goat, hog, shoat or pig belonging to another, with intent thereby to steal the same or to prevent identification thereof by the true owner, shall be guilty of a felony. [1881, p. 295, §§ 10, 17; R.S., R.C., & C.L., § 6867; C.S., § 8328; am. 1931, ch. 23, § 1, p. 50; I.C.A., § 24-1601; am. 1951, ch. 158, § 1, p. 354.]

**Collateral References.** 3A C.J.S., Animals, § 25.

**25-1902. Changing, defacing, or counterfeiting marks and brands.**  
[Repealed.]

**Compiler's notes.** This section, which § 24-1602, was repealed by S.L. 1951, ch. 158, § 2, p. 354.  
comprised S.L. 1881, p. 295, §§ 10, 17; R.S., R.C., & C.L., § 6879; C.S., § 8334; I.C.A.,

**25-1903. Use or possession of running iron.** — Any person who uses, or has, or keeps in his possession, any running branding iron, tool, or instrument used by him for running a brand on any livestock, or who changes or disfigures any brand with such instrument, is guilty of grand larceny and punishable as provided by law. The possession of such iron or instrument is prima facie evidence of guilt. [1885, p. 61, § 1; R.S., R.C., & C.L., § 6868; C.S., § 8329; I.C.A., § 24-1603.]

**Compiler's notes.** The law regarding larceny, §§ 18-4601 — 18-4615, has been repealed. For present law see § 18-2401 et seq.

**Collateral References.** 3A C.J.S., Animals, § 25.

**25-1904. Slaughtering cattle in remote places.** [Repealed.]

**Compiler's notes.** This section, which § 8330; I.C.A., § 24-1604, was repealed by  
comprised R.S., R.C., & C.L., § 6869; C.S., S.L. 1990, ch. 126, § 2.

**25-1905. Removal of hides from carcasses.** — Any person other than the owner, his servant or agent who skins or removes from the carcass, the skin, hide, or pelt of any neat cattle or sheep found dead or perished, is guilty of a misdemeanor. [1883, p. 126, § 1; R.S., R.C., & C.L., § 6870; C.S., § 8331; I.C.A., § 24-1605.]

**Cross ref.** Penalty for misdemeanor when not otherwise provided, § 18-113.

**25-1906. Slaughtering unbranded cattle.** — Any person who slaughters any head of neat cattle, before the same is distinctly marked or branded, is guilty of a misdemeanor. [1883, p. 126, § 2; R.S., R.C., & C.L., § 6871; C.S., § 8332; I.C.A., § 24-1606.]

**Cross ref.** Penalty for misdemeanor when not otherwise provided, § 18-113.

### **Larceny Not Necessary to Instruct on Other Offenses.**

In prosecution for larceny of a calf, the omission to charge on the offense of slaughtering unbranded neat cattle, and maliciously killing an animal belonging to another was not error, notwithstanding the fact that the

evidence tended to show either or both of such offenses had been committed, since the offense of larceny could have been completed without the commission of the other offenses. *State v. Craner*, 60 Idaho 620, 94 P.2d 1081 (1939).

**25-1907. Grazing sheep on cattle range.** — Any person owning or having charge of sheep, who herds, grazes, or pastures the same, or permits or suffers the same to be herded, grazed or pastured, on any cattle range previously occupied by cattle, or upon range usually occupied by any cattle grower, either as a spring, summer or winter range for his cattle, is guilty of a misdemeanor; but the priority of possessory right between cattle and sheep owners to any range, is determined by the priority in the usual and customary use of such range, either as a cattle or sheep range. [1883, p. 126, § 3; R.S., R.C., & C.L., § 6872; C.S., § 8333; I.C.A., § 24-1607.]

**Cross ref.** Penalty for misdemeanor when not otherwise provided, § 18-113.

**Cited in:** *State v. Wilding*, 57 Idaho 149, 63 P.2d 659 (1936).

#### **ANALYSIS**

Abandonment.  
Complaint.  
Constitutionality.  
Construction.  
Evidence.  
Injunction.  
Instructions to jury.  
Intent.  
Judicial notice.  
Police regulations.  
Prosecutions.

### **Abandonment.**

Exclusive right of cattlemen as against sheepmen to use the range first occupied by cattlemen may be abandoned by their ceasing to use it or by permitting use of it by sheep in common with cattle. Upon joint use without protest of cattlemen for period long enough to create custom the hearing or grazing of sheep thereon is not unlawful. *State v. Butterfield*, 30 Idaho 415, 165 P. 218 (1917).

### **Complaint.**

While charging in language of statute is usually sufficient, ingredients that do not enter into statutory definition must be added. *State v. Bidegain*, 33 Idaho 66, 189 P. 242 (1920).

### **Constitutionality.**

This section is constitutional. *State v. Horn*, 27 Idaho 782, 152 P. 275 (1915); *State v. Omaechevviaria*, 27 Idaho 797, 152 P. 280 (1915), *aff'd*, 246 U.S. 343, 38 S. Ct. 323, 62 L. Ed. 763 (1918); *State v. Butterfield*, 30 Idaho 415, 165 P. 218 (1917).

### **Construction.**

This section is not void for uncertainty. *State v. Omaechevviaria*, 27 Idaho 797, 152 P. 280 (1915), *aff'd*, 246 U.S. 343, 38 S. Ct. 323, 62 L. Ed. 763 (1918).

### **Evidence.**

If customary use of range has been for cattle, it is a cattle range. If customary use has been for both cattle and sheep, it is not a cattle range. Proof of customary use for both cattle and sheep is proper evidence in determining abandonment as cattle range. *State v. Butterfield*, 30 Idaho 415, 165 P. 218 (1917); *State v. Brace*, 49 Idaho 580, 290 P. 722 (1930), overruled on other grounds, *State v. McMahan*, 57 Idaho 240, 65 P.2d 156 (1937).

It is necessary that evidence show that sheep were actually on land and not merely near it. *State v. Mallea*, 33 Idaho 65, 189 P. 498 (1920).

### **Injunction.**

Defendant in criminal prosecution in state court for violation of this section was not entitled to maintain suit in federal court to enjoin further prosecution on the ground that this section had been abrogated by the federal grazing act, since the state court was competent to deal with the federal question involved. *Babcock v. Noh*, 99 F.2d 738 (9th Cir. 1938).

This section does not entitle one who has been accustomed to range cattle on public land to enjoin another from herding sheep on range. *McGinnis v. Friedman*, 2 Idaho (Hasb.) 393, 17 P. 635 (1888); *Bradshaw v. Burstedt*, 50 Idaho 54, 293 P. 330 (1930).

### **Instructions to Jury.**

It is not error for the court to refuse to give an instruction where there is no evidence to which it is applicable. *State v. Brace*, 49 Idaho



580, 290 P. 722 (1930), overruled on other grounds, *State v. McMahan*, 57 Idaho 240, 65 P.2d 156 (1937).

The court may instruct the jury, in substance, that the employer is responsible for his agent's acts only when he directs or authorizes such acts. *State v. Brace*, 49 Idaho 580, 290 P. 722 (1930), overruled on other grounds, *State v. McMahan*, 57 Idaho 240, 65 P.2d 156 (1937).

Defendant, in prosecution for herding sheep on cattle range, was entitled to have jury's attention called to any particular period during which he deemed the evidence had established an abandonment. *State v. Carlson*, 50 Idaho 634, 298 P. 936 (1931).

#### **Intent.**

In order to warrant conviction there must be an intent to violate this section, as well as the act of driving or herding sheep upon a cattle range. *State v. Omaechevviaria*, 27 Idaho 797, 152 P. 280 (1915), *aff'd*, 246 U.S. 343, 38 S. Ct. 323, 62 L. Ed. 763 (1918); *State v. Bidegain*, 33 Idaho 66, 189 P. 242 (1920).

Mere ownership of part interest in herd of sheep does not tend to prove wilful intent within meaning of this section. *State v. Becker*, 35 Idaho 568, 207 P. 429 (1922).

There must be intent to violate law, or

failure to exercise ordinary diligence to ascertain whether or not range is cattle range within meaning of statute. *State v. Moodie*, 35 Idaho 574, 207 P. 1073 (1922).

#### **Judicial Notice.**

In prosecutions under this section it is not necessary to allege or prove that cattle range is on public land. *State v. Bidegain*, 34 Idaho 365, 201 P. 312 (1921); *State v. Moodie*, 35 Idaho 574, 207 P. 1073 (1922).

#### **Police Regulations.**

Lands constituting the public domain of the United States within jurisdiction of this state are subject to police regulations of the state; the statute is a police regulation for avoidance of range wars possible to arise in case of the invasion of cattle ranges by sheepherders. *State v. Horn*, 27 Idaho 782, 152 P. 275 (1915); *State v. Omaechevviaria*, 27 Idaho 797, 152 P. 280 (1915), *aff'd*, 246 U.S. 343, 38 S. Ct. 323, 62 L. Ed. 763 (1918).

#### **Prosecutions.**

Prosecutions for this offense may be commenced in district court by filing criminal complaint. *State v. Snook*, 34 Idaho 403, 201 P. 494 (1921); *State v. Moodie*, 35 Idaho 574, 207 P. 1073 (1922).

**25-1908. Grazing stock on improved land.** — Any owner or other person in charge of any herd or drove of livestock, who wilfully or negligently injures any resident of the state by driving or moving such herd or drove from any public highway, and herding or grazing the same on land occupied and improved by any settler in possession of the same, is guilty of a misdemeanor. [1881, p. 295, § 15; R.S., R.C., C.L., § 6882; C.S., § 8335; I.C.A., § 24-1608.]

**Cross ref.** Penalty for misdemeanor when not otherwise provided, § 18-113.

Similar provisions, § 25-1303.

**Collateral References.** 3A C.J.S., Animals, §§ 241, 242.

**25-1909. Stealing services of bull.** — It shall be unlawful for any person, without the consent of the owner, to take possession of any bull found running at large upon the open range and to confine the same in any inclosure for the purpose of obtaining service therefrom. And in any trial for violation of the provisions of this section, upon proof on the part of the state that any person has taken possession of such bull, upon the open range, and has confined the said bull in any inclosure with cows, such fact may be considered by the jury as bearing upon the question of the intent of such person to secure unlawfully the service of such bull. Any person violating any of the provisions of this section shall be deemed guilty of a misdemeanor. [1911, ch. 130, § 1, p. 417; reen. C.L., § 6882a; C.S., § 8336; I.C.A., § 24-1609.]



**Cross ref.** Penalty when not otherwise provided, § 18-113.

Registered bull, failure to provide on range, penalty, §§ 25-2116, 25-2117.

**25-1910. Civil damages and other penalties upon theft or unlawful destruction of furbearing animals raised for commercial purposes or livestock.** — (1) In addition to the criminal penalties that may be imposed upon a person convicted of theft or unlawful destruction of furbearing animals raised for commercial purposes or livestock, the court shall assess civil damages against the defendant in any amount necessary to fully compensate the owner of the furbearing animals raised for commercial purposes or livestock for his loss, which amount shall be paid to the owner, and any amount necessary to fully compensate any trade association which has paid out rewards which led to the arrest and conviction of the defendant in the particular case, which amount shall be paid to the trade association.

(2) Any person who intentionally and without permission of the owner releases any furbearing animals raised for commercial purposes is guilty of a felony and the court may assess civil damages against the defendant in any amount necessary to compensate the owner of the furbearing animals raised for commercial purposes. Additionally, any person who intentionally destroys or conspires to destroy any paper or electronic record of a furbearing animal raised for commercial purposes shall be guilty of a felony and the court may assess civil damages against the defendant in any amount necessary to compensate the owner of the furbearing animals raised for commercial purposes. [I.C., § 25-1910, as added by 1983, ch. 19, § 3, p. 54; am. 1990, ch. 126, § 3, p. 297; am. 1999, ch. 158, § 1, p. 436.]

**Compiler's notes.** Section 2 of S.L. 1983, ch. 19 is compiled as § 18-2408.

Section 1 of S.L. 1990, ch. 126 is compiled as § 18-7037 and § 2 repealed § 25-1904.

**Sec. to sec. ref.** This section is referred to in § 18-2408.

**Cited in:** State v. Aubert, 119 Idaho 868, 811 P.2d 44 (Ct. App. 1991).

## CHAPTER 20

### LEASES OF LIVESTOCK

#### SECTION.

**25-2001.** Leases to be in writing and recorded.

**25-2001. Leases to be in writing and recorded.** — All leases of more than ten (10) head of livestock must be in writing and must be acknowledged in like manner as grants of real property, and recorded in the county recorder's office or offices, for the same fee as required by section 31-3205, Idaho Code; and the failure to comply with the provisions of this section renders the interest of the lessor in the property subject and subsequent to the claims of creditors of the lessee, and of subsequent purchasers and encumbrancers of the property in good faith and for value. [1907, p. 481, § 1; reen. R.C. & C.L., § 1263; C.S., § 1955; I.C.A., § 24-1701; am. 1984, ch. 116, § 1, p. 261.]

**Cross ref.** Acknowledgments of grants of real property, § 55-701 et seq.  
Statute of frauds, § 9-505.

**Cited in:** Hull v. Cartin, 61 Idaho 578, 105 P.2d 196 (1940).

#### ANALYSIS

Burden of proof.  
"Creditor" construed.  
Installment sales contract.  
Recording of lease.  
Running of statute of limitations.

#### Burden of Proof.

In order to involve the doctrine of comity between states with respect to contracts, it is incumbent upon the party claiming such a benefit to show that his is such a contract as is contemplated by the doctrine. He must produce proof that the contract in behalf of which he seeks to invoke this rule is a foreign contract contemplated by the rule, and this doctrine is applicable to a contract within the meaning of this section when it is made in another state between parties thereof affecting livestock therein, but later moved to Idaho. Hare v. Young, 26 Idaho 682, 146 P. 104 (1915).

#### "Creditor" Construed.

Term "creditor" as used in this section does not refer to general creditor, but one who has acquired some sort of lien by attachment, or otherwise, on property. Continental Nat'l Bank v. Naylor, 39 Idaho 267, 228 P. 266 (1924).

#### Installment Sales Contract.

An agreement purporting to lease cattle could not be brought within the scope of this section by entitling it a "lease" when it was commercially identical to an installment sales contract covered by § 28-1-201(37). Whitworth v. Krueger, 98 Idaho 65, 558 P.2d 1026 (1976).

#### Recording of Lease.

Under this section lease must be recorded when lease was made in another state, but livestock was afterward brought into Idaho. Hare v. Young, 26 Idaho 682, 146 P. 104 (1915).

#### Running of Statute of Limitations.

Where there is a failure to comply with estray laws, the taker-up is guilty of tort, and where the possession of property is acquired by tort, no demand need be made previous to the institution of a suit for the recovery of the property, and consequently the statute of limitations is set in motion without such demand. And the nondiscovery of the location of a chattel alleged to be an estray is not a material element in the computation of the period of limitation allowed by law to commence an action to recover such chattel. Havird v. Lung, 19 Idaho 790, 115 P. 930 (1911).

**Collateral References.** 4 Am. Jur. 2d, Animals, §§ 78-85.

3A C.J.S., Animals, §§ 38-65.

## CHAPTER 21

### ANIMALS RUNNING AT LARGE

#### SECTION.

- 25-2101. Hogs need not be fenced against.
- 25-2102. Taking up trespassing hogs.
- 25-2103. Taking up hogs — Notice.
- 25-2104. Taking up hogs — Arbitration of damages.
- 25-2105. Taking up hogs — Failure of owner to appear.
- 25-2106. Hogs running at large within towns.
- 25-2107. Ranging hogs or goats in towns or settlement unlawful.
- 25-2108. Stallions not permitted to run at large.
- 25-2109. Stallions running at large — Penalty for violation.
- 25-2110. Stallion may be taken up.

#### SECTION.

- 25-2111. Stallions taken up — Notice and sale.
- 25-2112. Ranging stock in towns unlawful.
- 25-2113. Penalty for ranging stock in towns.
- 25-2114. Ranging stock in towns — Duties of officers.
- 25-2115. Ranging sheep in unincorporated municipalities unlawful.
- 25-2116. Registered bulls — Failure to provide on range — Penalty.
- 25-2117. Breeding season defined.
- 25-2118. Animals on open range — No duty to keep from highway.
- 25-2119. Owner or possessor of animal not liable for animal on highway.



**25-2101. Hogs need not be fenced against.** — The owner or occupant of premises is not required to fence against hogs. [R.S., § 1340; reen. R.C. & C.L., § 1278; C.S., § 1970; I.C.A., § 24-1801.]

**Cross ref.** Barbed wire, careless exposure unlawful, notice to owner, civil and criminal liability, §§ 35-301 — 35-305.

Lawful fences, §§ 35-101, 35-102.

Partition fences, §§ 35-103 — 35-112.

Quartz mills, fencing of reservoir and dumps, liability for failure to inclose, §§ 35-201, 35-202.

**Cited in:** *Sifers v. Johnson*, 7 Idaho 798, 65 P. 709, 54 L.R.A. 785, 97 Am. St. R. 271 (1901).

#### **Constitutionality.**

This and the following sections provide complete proceedings for recovering damages for trespassing hog, are not repugnant to the constitution, and do not deny owner of hog right to contest claim for damages. *Fall Creek Sheep Co. v. Walton*, 24 Idaho 760, 136 P. 438, 1915C Ann. Cas. 1252 (1913).

**25-2102. Taking up trespassing hogs.** — If any hog is found trespassing, the occupant or proprietor of the premises may take up and safely keep, at the expense of the owner thereof, such hog, and hold the same until the payment of the expenses and damages by the owner, and shall be allowed fifty cents (50¢) per head additional for each animal so taken up. [1881, p. 434, § 1; am. R.S., § 1341; am. 1888-1889, p. 38, § 1; reen. R.C. & C.L., § 1279; C.S., § 1971; I.C.A., § 24-1802.]

#### **ANALYSIS**

Constitutionality.  
Construction.

#### **Constitutionality.**

Regulations provided for in this and the following sections are a valid exercise of police power of the state and are constitutional. *Sifers v. Johnson*, 7 Idaho 798, 65 P. 709, 54 L.R.A. 785, 97 Am. St. R. 271 (1901); *Fall Creek Sheep Co. v. Walton*, 24 Idaho 760, 136 P. 438, 1915C Ann. Cas. 1252 (1913).

#### **Construction.**

Owner of mere easement or right-of-way is

not "owner" of "premises" within meaning of this section; nor is he "occupant," for such word often carries idea of exclusive possession. *Pioneer Irrigation Dist. v. Smith*, 48 Idaho 734, 285 P. 474 (1930).

Regulations provided for in this and the following sections must be strictly followed. *Southeast Sec. Co. v. Christensen*, 70 Idaho 338, 218 P.2d 342 (1950).

**Collateral References.** 4 Am. Jur. 2d, Animals, § 65.

3A C.J.S., Animals, § 140.

**25-2103. Taking up hogs — Notice.** — Any person taking up a hog under this chapter, must immediately thereafter write out three (3) notices in a plain, legible hand giving a correct description thereof with the marks and brands, if any, on said hog, and the time and place of taking up, and at once post up said notices in a good and substantial manner in three (3) conspicuous places in the precinct in which said hog was taken up. [1881, p. 434, § 2; am. R.S., § 1342; reen. R.C. & C.L., § 1280; C.S., § 1972; I.C.A., § 24-1803.]

#### **ANALYSIS**

Constitutionality.  
Evidence.  
Right of action.

#### **Constitutionality.**

This section, along with §§ 25-2101, 25-

2102, 25-2104, and 25-2105 provide complete proceedings for recovering damages for trespassing hog, are not repugnant to the constitution, and do not deny owner of hog right to contest claim for damages. *Fall Creek Sheep Co. v. Walton*, 24 Idaho 760, 136 P. 438, 1915C Ann. Cas. 1252 (1913).



**Evidence.**

Where the arbitration agreement is invalid, the admission in evidence, over plaintiff's objections, of notice of the taking up of the hogs, notices of sale, and levy on the hogs, is reversible error. *Southeast Sec. Co. v. Christensen*, 70 Idaho 338, 218 P.2d 342 (1950).

**Right of Action.**

Right of distress damage feasant, see *Kelly v. Easton*, 35 Idaho 340, 207 P. 129, 26 A.L.R. 1042 (1922).

**Collateral References.** 3A C.J.S., Animals, §§ 124, 126, 127.

**25-2104. Taking up hogs — Arbitration of damages.** — If the owner and taker-up of such hog cannot agree as to the amount of damage, they must each select a disinterested person, residing in the precinct where such trespass has been committed, who must, after first hearing all the facts in the case from both parties interested, fix the amount of damages, if any, to be paid, and the same are a lien upon said hog and other personal property of the owner, not exempt by law, and if said amount is not paid within five (5) days, together with the costs of keeping said hog, the taker-up must notify the constable of the precinct, whose duty it is to levy upon the hog and a sufficient amount of other personal property of the owner not exempt by law, as shall pay all damages and costs, and shall sell at public auction on the premises where the said hog was taken up, after first giving five (5) days' notice of such sale, in the manner prescribed in the last section, and must be applied, first, to the payment of the constable's fees, which are the same as on execution; second, the payment of the award, and subsequent charges for keeping, to the taker-up of such hog, and the remainder, if any, must be paid to the owner of such hog: provided, that either party feeling aggrieved by the award may appeal to any justice's or probate court within the county, within five (5) days after said award, and the party so appealing must file a good and sufficient bond for the payment of all costs and expenses arising from said appeal. [1881, p. 434, § 3; am. R.S., § 1343; am. 1888-1889, p. 38, § 2; reen. R.C. & C.L., § 1281; C.S., § 1973; I.C.A., § 24-1804.]

**ANALYSIS**

Constitutionality.

Compliance with law.

Pleading, burden of proof.

**Constitutionality.**

This section, along with §§ 25-2101 — 25-2103, and 25-2105 provide complete proceedings for recovering damages for trespassing hog, are not repugnant to the constitution, and do not deny owner of hog right to contest claim for damages. *Fall Creek Sheep Co. v. Walton*, 24 Idaho 760, 136 P. 438, 1915C Ann. Cas. 1252 (1913).

**Compliance with Law.**

The finding, conclusions and report of one only of a board of two arbitrators does not constitute an arbitration and, in the meaning of the law, is not a compliance therewith unless joined in by a majority of such board. *Southeast Sec. Co. v. Christensen*, 66 Idaho 233, 158 P.2d 315 (1945).

An arbitration agreement signed by only

one arbitrator, is not a compliance with the statute, nor does it constitute an arbitration, and such agreement is not competent evidence. *Southeast Sec. Co. v. Christensen*, 70 Idaho 338, 218 P.2d 342 (1950).

**Pleading, Burden of Proof.**

In action for wrongful conversion of hogs, where defendant pleaded defense that the damage done by the hogs had been arbitrated and the hogs all sold pursuant to statute to satisfy such damages, defendant had the burden of proving such defense. *Southeast Sec. Co. v. Christensen*, 66 Idaho 233, 158 P.2d 315 (1945).

In action for conversion of hogs where defendant set up affirmative defense that hogs had damaged his property and they had been sold to satisfy such damage as fixed by arbitration, court erred in granting defendant's motion for nonsuit at close of plaintiff's evidence since defendant should have been required to prove his defense. *Southeast Sec. Co. v. Christensen*, 66 Idaho 233, 158 P.2d 315 (1945).

The fact that arbitration proceedings are pending to determine damage done by hogs is not a bar to action against defendant for conversion of the hogs. *Southeast Sec. Co. v. Christensen*, 66 Idaho 233, 158 P.2d 315 (1945).

**Collateral References.** 4 Am. Jur. 2d, Animals, § 68.

3A C.J.S., Animals, § 132.

**25-2105. Taking up hogs — Failure of owner to appear.** — If the owner or person entitled to the possession of such hog does not appear and substantiate his title thereto, and pay the charges thereon within thirty (30) days after the notice has been given, as above provided, the absolute ownership of such hog shall be vested in the person taking up such hog: provided, he shall keep a copy of the notices posted, as proscribed by this chapter, which shall have indorsed thereon the date and manner of posting and the places where posted, which shall have the same force and effect as a bill of sale of such hog. [1881, p. 434, § 4; am. R.S., § 1344; am. 1888-1889, p. 38, § 3; reen. R.C. & C.L., § 1282; C.S., § 1974; I.C.A., § 24-1805.]

**Cited in:** *Sifers v. Johnson*, 7 Idaho 798, 65 P. 709, 54 L.R.A. 785, 97 Am. St. R. 271 (1901).

#### ANALYSIS

Defense, burden of proof.

Right of action.

#### Defense, Burden of Proof.

In action for conversion of hogs where defendant set up affirmative defense that hogs had damaged his property and they had been sold to satisfy such damage as fixed by arbitration, court erred in granting defendant's motion for nonsuit at close of plaintiff's evidence since defendant should have been required to prove his defense. *Southeast Sec. Co. v. Christensen*, 66 Idaho 233, 158 P.2d 315 (1945).

#### Right of Action.

Where trespassing hogs are taken up and advertised under this section, if owner fails to appear and contest the matter, holder has a lien on hogs, and claim and delivery is not the proper remedy to retake them. *Fall Creek Sheep Co. v. Walton*, 24 Idaho 760, 136 P. 438, 1915C Ann. Cas. 1252 (1913).

The fact that arbitration proceedings are pending to determine damage done by hogs is not a bar to action against defendant for conversion of the hogs. *Southeast Sec. Co. v. Christensen*, 66 Idaho 233, 158 P.2d 315 (1945).

**Collateral References.** 3A C.J.S., Animals, § 132.

**25-2106. Hogs running at large within towns.** — It shall be the duty of any constable or peace officer in any platted and recorded town, upon the complaint of any citizen thereof, to take up and impound all hogs found running at large within the limits of said town. He shall keep and dispose of all hogs so taken up in the manner prescribed by this chapter. [R.S., § 1345; am. 1888-1889, p. 38, § 4; reen. R.C. & C.L., § 1283; C.S., § 1975; I.C.A., § 24-1806.]

**Cross ref.** Similar provisions, §§ 25-2112 — 25-2114.

**Collateral References.** 4 Am. Jur. 2d, Animals, § 69.

3A C.J.S., Animals, § 160.



**25-2107. Ranging hogs or goats in towns or settlement unlawful.**

— Any person who wilfully or negligently permits any hog or goat owned by him, or in his care or custody, to be or run at large without a drover within the limits of any city, town, or village, or in the vicinity of any farm, ranch, dwelling house, or cultivated lands of another, or who wilfully or negligently fails, neglects or refuses to keep any such hog or goat securely penned within the limits of any city, town, village or in the vicinity of any farm ranch, dwelling house, or cultivated lands of another, shall be guilty of a misdemeanor. [1909, p. 190, § 1; reen. C.L., § 1283a; C.S., § 1976; I.C.A., § 24-1807.]

**Cross ref.** Penalty for misdemeanor when not otherwise provided, § 18-113.

**25-2108. Stallions not permitted to run at large.** — The owner of any stallion over the age of eighteen (18) months must not allow the same to run at large, unless it is of the market cash value of \$250, or more, and is at such value assessed. [1869, p. 127, § 1; am. R.S., § 1240; am. 1890-1891, p. 48, § 1; reen. 1899, p. 26, § 1; reen. R.C. & C.L., § 1284; C.S., § 1977; I.C.A., § 24-1808.]

**Stallion Killed, Damages.**

Fact that stallion has escaped from the inclosed pasture of its owner does not preclude owner from recovering damages for death of stallion caused by its getting on track of a railroad at place where railroad has

unlawfully failed to fence. *Patrie v. Oregon Short Line R.R.*, 6 Idaho 448, 56 P. 82 (1899).

**Collateral References.** 4 Am. Jur. 2d, Animals, § 50.

3A C.J.S., Animals, §§ 157-158.

**25-2109. Stallions running at large — Penalty for violation.** — If any stallion of less than \$250 market cash and assessed value, ridgeling, or any unaltered male mule or jackass over the age of eighteen (18) months be found running at large, the owner must be fined for the first offense twenty dollars (\$20.00), and for each subsequent offense not more than \$100, nor less than forty dollars (\$40.00), to be recovered before a justice of the peace in the name of any person who will prosecute the same, one half (½) to his own use and the other half to the use of the county school fund. [1869, p. 127, § 2; am. R.S., § 1241; am. 1890-1891, p. 48, § 2; reen. 1899, p. 26, § 2; reen. R.C. & C.L., § 1285; C.S., § 1978; I.C.A., § 24-1809.]

**Compiler's notes.** The disposition of the fine provided in this section may be superseded by § 19-4705, effective January 11, 1971.

**Collateral References.** 3A C.J.S., Animals, § 168.

**25-2110. Stallion may be taken up.** — Any person may take up and safely keep any such stallion, mule, ridgeling or jackass found running at large or in his inclosures; and, when so found, must give the owner thereof five (5) days' notice that such animal is in his possession; and if, at the expiration of the aforesaid time, the owner neglects to remove such animal and pay all reasonable charges for keeping the same, then the taker-up must notify the sheriff or any constable, whose duty it is to sell such animal



at public auction, on the premises where taken up, after first giving five (5) days' notice of such sale; and the proceeds of such sale must be applied, first, to the fees of the officer making such sale, which are the same as on execution; second, to the payment of the charges of the taker-up of such animal; and the remainder, if there be any, must be paid to the owner of such animal. [1869, p. 127, § 3; am. R.S., § 1242; am. 1890-1891, p. 48, § 3; reen. 1899, p. 26, § 3; reen. R.C. & C.L., § 1286; C.S., § 1979; I.C.A., § 24-1810.]

**Collateral References.** 3A C.J.S., Animals, §§ 159-161.

**25-2111. Stallions taken up — Notice and sale.** — If the owner or claimant of any stallion, ridgeling, unaltered male mule or jackass be unknown, the taker-up must give ten (10) days' notice, with the description of the animal or animals, its marks or brands, by posting up at least three (3) written or printed notices in at least three (3) conspicuous places in the county, calling upon the owner to claim the property; and if, at the expiration of the ten (10) days, the owner neglects to remove such animal or animals and pay all costs, then the taker-up shall call on the sheriff or any constable of the county to sell such animal or animals; and after deducting the fees of the officer making such sale and the reasonable charges of the taker-up, the balance, if any there be, shall be paid into the county treasury, to be applied to the county school fund. [1869, p. 127, § 4; R.S., § 1243; am. 1890-1891, p. 48, § 4; reen. 1899, p. 26, § 4; reen. R.C. & C.L., § 1287; C.S., § 1980; I.C.A., § 24-1811.]

**Collateral References.** 3A C.J.S., Animals, §§ 89-98, 162, 163.

**25-2112. Ranging stock in towns unlawful.** — It shall be unlawful for any person or persons owning livestock, or the agent or employee of such person or persons, to allow any cattle, horses, sheep or hogs to range or graze within the platted limits of any incorporated town or village of more than five hundred (500) inhabitants, between the first day of September and the first day of April, without a herder. [1901, p. 158, § 1; reen. R.C. & C.L., § 1288; C.S., § 1981; I.C.A., § 24-1812.]

**Cross ref.** Similar provisions as to hogs, §§ 25-2106, 25-2107.

**25-2113. Penalty for ranging stock in towns.** — Any person or persons, or the agent or employee of such person or persons, violating the provisions of the last section, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined in a sum of not less than five dollars (\$5.00) nor more than twenty-five dollars (\$25.00). [1901, p. 158, § 2; reen. R.C. & C.L., § 1289; C.S., § 1982; I.C.A., § 24-1813.]

**Collateral References.** 3A C.J.S., Animals, § 168.

**25-2114. Ranging stock in towns — Duties of officers.** — It is hereby made the duty of any sheriff, deputy sheriff, or constable, to complain against and prosecute any person or persons violating the above sections. [1901, p. 158, § 3; reen. R.C. & C.L., § 1290; C.S., § 1983; I.C.A., § 24-1814.]

**Compiler's notes.** The words "above sections" refer to §§ 25-2112, 25-2113.

**25-2115. Ranging sheep in unincorporated municipalities unlawful.** — Any person who wilfully or negligently permits any sheep owned by him, or in his care or custody, to be or run at large without a drover within the limits of any unincorporated city, town or village, or who wilfully or negligently fails, neglects or refuses to keep any such sheep controlled within the limits of any unincorporated city, town, or village, shall be guilty of a misdemeanor. [1911, ch. 129, § 1, p. 417; reen. C.L., § 1290a; C.S., § 1984; I.C.A., § 24-1815.]

**Cross ref.** Penalty for misdemeanor when not otherwise provided, § 18-113.

**25-2116. Registered bulls — Failure to provide on range — Penalty.** — During the breeding season every user of the public range shall place upon the range used by him a registered bull of beef breed not less than fifteen (15) months of age nor more than eight (8) years of age for every twenty-five (25) head or fraction thereof of female breeding cattle pastured by him on such range, and no person shall permit any bull to run on the same range at any other time than during three (3) successive breeding seasons: provided, the term "female breeding cattle" shall not apply to female cattle under twelve (12) months of age: provided, that any two (2) or more persons may join together in furnishing such bull when the aggregate number of female breeding cattle turned loose upon the same range by any such two (2) or more persons does not exceed the number of twenty-five (25) head; provided further, that the owner or owners of female dairy cattle may pasture them on the public range without a bull, as above provided, if such female dairy cattle are taken up each night to be milked and the owner or owners keep for the breeding of every fifty (50) head of such cattle a registered bull of dairy breed, but no person shall allow a bull of dairy breed to run at large.

Any person or persons violating any of the foregoing provisions shall be guilty of a misdemeanor and on conviction thereof shall be fined not less than twenty-five dollars (\$25.00) and not exceeding \$100. [1911, ch. 169, § 1, p. 564; am. 1913, ch. 175, § 1, p. 551; am. 1917, ch. 107, § 1, p. 386; reen. C.L., § 1209g; am. 1919, ch. 133, § 1, p. 428; C.S., § 1985; am. 1921, ch. 258, § 1, p. 571; am. 1931, ch. 58, § 1, p. 95; I.C.A., § 24-1816.]

**Collateral References.** 4 Am. Jur. 2d, Animals, § 86.  
3A C.J.S., Animals, § 31.



**25-2117. Breeding season defined.** — The term “breeding season,” as used in the preceding section, shall be construed according to the local custom upon that range. [1919, ch. 133, § 2, p. 428; C.S., § 1986; I.C.A., § 24-1817.]

**25-2118. Animals on open range — No duty to keep from highway.** — No person owning, or controlling the possession of, any domestic animal running on open range, shall have the duty to keep such animal off any highway on such range, and shall not be liable for damage to any vehicle or for injury to any person riding therein, caused by a collision between the vehicle and the animal. “Open range” means all uninclosed lands outside of cities, villages and herd districts, upon which cattle by custom, license, lease, or permit, are grazed or permitted to roam. [1961, ch. 249, § 1, p. 415.]

#### ANALYSIS

Application.

Construction with other statutes.

Liability when not on open range.

— Evidence.

Livestock control ordinance.

Local usage.

Open range.

— Cattle.

— Unenclosed land.

Purpose.

#### Application.

This section addresses itself to the problems of increasing the spread of highways and the flow of high-speed traffic through areas of open range grazing of livestock and where liability should be placed when a collision between livestock and auto occurs, and does not address itself to the question of liability of a livestock owner for damage caused by his stock straying across a highway and on to adjoining landowner's property. *Maguire v. Yanke*, 99 Idaho 829, 590 P.2d 85 (1978).

The legislature used absolute language in this section because it intended to completely immunize owners in open range areas from liability under any cause of action, while it used more limited language in § 25-2119 because it intended to absolutely immunize owners from a negligence cause of action only in the limited situation where animals are lawfully present on the highway. *Adamson v. Blanchard*, 133 Idaho 602, 990 P.2d 1213 (1999).

#### Construction With Other Statutes.

§§ 25-2118 and 25-2119, enacted simultaneously by the legislature, are in *pari materia* because they relate to the liability relationship between livestock owners and motorists on the highway. *Adamson v. Blanchard*, 133 Idaho 602, 990 P.2d 1213 (1999).

#### Liability when Not on Open Range.

There being no evidence that, in the partic-

ular area where plaintiff's automobile struck defendant's calf, defendant's cattle, by custom, license, lease, or permit, were grazed or permitted to roam on “uninclosed” lands, the statute providing that no person owning or controlling a domestic animal lawfully on any highway shall be deemed guilty of negligence thereof did not relieve defendant of liability. *Soran v. Schoessler*, 87 Idaho 425, 394 P.2d 160 (1964).

This section impliedly makes it the duty of a person owning, or controlling the possession of, a domestic animal, to keep such animal off the highway, unless the highway is on open range; and does not absolve such person from liability for damages to a vehicle or injury to a person caused by a collision between the vehicle and any such animal, unless the highway is on open range. *Corthell v. Pearson*, 88 Idaho 295, 399 P.2d 266 (1965); *Whitt v. Jarnagin*, 91 Idaho 181, 418 P.2d 278 (1966).

This section impliedly makes it the duty of the person owning or controlling the possession of livestock, to keep them off any highway not located in open range; and does not absolve such a person of liability for damages caused by a collision between a vehicle and the animal, unless the highway is in open range. *Maguire v. Yanke*, 99 Idaho 829, 590 P.2d 85 (1978).

This section and § 25-2119 do not impose liability as a matter of law when the animal is not in “open range” or “lawfully” on the highway; however, *res ipsa loquitur* supplies an inference of negligence unless satisfactorily explained by the animal owner. *Griffith v. Schmidt*, 110 Idaho 235, 715 P.2d 905 (1985).

#### — Evidence.

Where the horses were not in “open range” or “lawfully” on the highway, the jury should have been permitted to consider the evidence offered by defendants as to the proper care and enclosures of the horses, which evidence



was offered in an attempt to rebut the inference of the negligence and proximate cause. *Griffith v. Schmidt*, 110 Idaho 235, 715 P.2d 905 (1985).

#### **Livestock Control Ordinance.**

Ordinance prohibiting livestock from roaming did not conflict with this section since the ordinance expressly disclaimed any intention to effect tort liability. *Benewah County Cattlemen's Ass'n v. Board of County Comm'rs*, 105 Idaho 209, 668 P.2d 85 (1983).

#### **Local Usage.**

The question of "custom, license, lease or permit" is resolved by reference to the dominant usage of the area in question. *Greer v. Ellsworth*, 113 Idaho 979, 751 P.2d 675 (Ct. App. 1988).

#### **Open Range.**

Where the Bureau of Land Management (BLM) land undisputedly was unfenced grazing land where cattle were customarily grazed each year under permits issued by the BLM, the surrounding properties were used for grazing, and "Watch for Stock" signs were posted in the vicinity along the highway, the BLM land was open range even though the cattle could not have entered the BLM land as a matter of right. *Greer v. Ellsworth*, 113 Idaho 979, 751 P.2d 675 (Ct. App. 1988).

Under the three-tiered test of this section land is deemed "open range" if it is (1) unenclosed; (2) located outside of cities, villages and herd districts; and (3) land upon which cattle, by custom, license, lease, or permit, are grazed or permitted to roam. *Hubbard v. Howard*, 758 F. Supp. 594 (D. Idaho 1990), *aff'd*, 927 F.2d 609 (9th Cir. 1991).

#### **—Cattle.**

In action for wrongful death as a result of collision between plaintiff's decedent's automobile and defendant's horses, defendant in order to acquire immunity under this section was only required to show that the land immediately adjacent the highway was land upon which cattle could graze or roam, and this is so even though the land in question was not an area upon which horses by custom,

lease or permit were grazed or permitted to roam. *Hubbard v. Howard*, 758 F. Supp. 594 (D. Idaho 1990), *aff'd*, 927 F.2d 609 (9th Cir. 1991).

#### **—Unenclosed Land.**

In action for wrongful death where straying horses collided with automobile, in order to determine whether land is enclosed for the purpose of acquiring immunity under this section, the focus is not on the nature of the land from which the horses strayed so much as it is upon the land in the immediate vicinity of the highway; thus, the fact that there was no question that the land adjacent to highway was unenclosed was controlling, and it was of no consequence whether area from which the horses strayed was enclosed or unenclosed. *Hubbard v. Howard*, 758 F. Supp. 594 (D. Idaho 1990), *aff'd*, 927 F.2d 609 (9th Cir. 1991).

Rangeland was unenclosed as required by this section where the western end of the enclosure from which horses strayed, the end nearest state highway, was open to other rangeland; there were no obstructions between the west end of the enclosure from which horses strayed and the highway (with the exception of the Bureau of Land Management fence which is not a containment fence); the fence surrounding the enclosure from which horses strayed was an intermittent fence with gaps in some areas; gates were routinely left open to permit cattle and horses to access watering areas; and the land immediately adjacent to the highway was unfenced rangeland belonging to the Bureau of Land Management. *Hubbard v. Howard*, 758 F. Supp. 594 (D. Idaho 1990), *aff'd*, 927 F.2d 609 (9th Cir. 1991).

#### **Purpose.**

The passage of § 25-2402 and this section with their accompanying definition of "open range" in terms of historical use, was not intended to and does not change the law of this State that with the exception of cities, villages, and herd districts, livestock may run at large and graze upon unenclosed lands in this State. *Maguire v. Yanke*, 99 Idaho 829, 590 P.2d 85 (1978).

**25-2119. Owner or possessor of animal not liable for animal on highway.** — No person owning, or controlling the possession of, any domestic animal lawfully on any highway, shall be deemed guilty of negligence by reason thereof. [1961, ch. 249, § 2, p. 415.]

**Cited in:** *Soran v. Schoessler*, 87 Idaho 425, 394 P.2d 160 (1964).

#### **ANALYSIS**

Legislative intent.  
Burden of proof.

Construction with other statutes.  
Highways not on open range.  
Lawfully on highway.

#### **Legislative Intent.**

The legislature used absolute language in

§ 25-2118 because it intended to completely immunize owners in open range areas from liability under any cause of action, while it used more limited language in this section because it intended to absolutely immunize owners from a negligence cause of action only in the limited situation where animals are lawfully present on the highway. *Adamson v. Blanchard*, 133 Idaho 602, 990 P.2d 1213 (1999).

#### **Burden of Proof.**

The burden rested on appellant to show his domestic animal was lawfully on the highway; otherwise under this section the implied duty rested upon appellant to keep his animal off the highway, since the land was in a herd district and not on open range. *Corthell v. Pearson*, 88 Idaho 295, 399 P.2d 266 (1965).

#### **Construction With Other Statutes.**

Section 25-2118 and this section, enacted simultaneously by the legislature, are in *pari materia* because they relate to the liability relationship between livestock owners and motorists on the highway. *Adamson v. Blanchard*, 133 Idaho 602, 990 P.2d 1213 (1999).

#### **Highways Not on Open Range.**

Animals on highway in a herd district are not lawfully on the highway within the meaning of this section and the owner or person in control thereof may be charged with negligence in not keeping them off the highway. *Whitt v. Jarnagin*, 91 Idaho 181, 418 P.2d 278 (1966).

#### **Lawfully on Highway.**

Where the horses were not on "open range" or "lawfully" on the highway, the jury should have been permitted to consider the evidence offered by defendants as to proper care and enclosures of the horses, which evidence was offered in an attempt to rebut the inference of the negligence and proximate cause. *Griffith v. Schmidt*, 110 Idaho 235, 715 P.2d 905 (1985).

Section 25-2118 and this section do not impose liability as a matter of law when the animal is not in "open range" or "lawfully" on the highway; however, *res ipsa loquitur* supplies an inference of negligence unless satisfactorily explained by the animal owner. *Griffith v. Schmidt*, 110 Idaho 235, 715 P.2d 905 (1985).

## CHAPTER 22

### TRESPASS OF ANIMALS

#### SECTION.

- 25-2201. Special lien on trespassing animals.
- 25-2202. Perfecting lien.
- 25-2203. Appointment of viewers.
- 25-2204. Determinations of viewers.
- 25-2205. Findings of amount due.
- 25-2206. Enforcement of finding.

#### SECTION.

- 25-2207. Sale and distribution of proceeds.
- 25-2208. Livestock not to be moved.
- 25-2209. Court proceedings.
- 25-2210. Penalties.
- 25-2211. Viewers' qualifications.

**25-2201. Special lien on trespassing animals.** — Any person having a field of [or] enclosure with a "lawful fence" as described in chapter 1, title 35, Idaho Code, entirely surrounding the field or enclosure shall have a special lien upon, and may take up any domestic livestock such as cattle, horses, mules, donkeys, sheep, goats or other domestic livestock which break into the enclosure. The lien will include the care and feeding of the livestock and other charges as provided for in chapter 23, title 25, Idaho Code, in relation to estrays. The lien is not dependent upon possession. It may be perfected by following the provisions of this chapter which are required of the lien claimant. [I.C., § 25-2201, as added by 1978, ch. 168, § 2, p. 366.]

**Compiler's notes.** The former chapter 22, which comprised S.L. 1867, p. 80, §§ 9-14, 16, 17; R.S., §§ 1320-1327; reen. R.C. & C.L. §§ 1292 — 1298; C.S. §§ 1987 — 1994; am. 1927, ch. 138, §§ 1, 2, p. 180; I.C.A., §§ 24-1901 — 24-1908; am. 1945, ch. 8, § 1, p. 10 was repealed by S.L. 1978, ch. 168, § 1.

The bracketed word "or" in the first sentence was inserted by the compiler.

**Cross ref.** Barbed wire, careless exposure unlawful, notice to owner, civil and criminal liability, §§ 35-301 — 35-305.

Lawful fences, §§ 35-101, 35-102.

Partition fences, §§ 35-103 — 35-112.



Quartz mills, fencing of reservoirs and dumps, liability for failure to inclose, §§ 35-201, 35-202.

**Cited in:** *State v. Kelly*, 106 Idaho 268, 678

P.2d 60 (Ct. App. 1984); *Nelson v. Holdaway Land & Cattle Co.*, 107 Idaho 550, 691 P.2d 796 (Ct. App. 1984).

#### DECISIONS UNDER PRIOR LAW

##### ANALYSIS

Common law.

Fencing out.

##### Common Law.

Common-law rule that every man must confine his own cattle to his own land does not obtain in this state. *Johnson v. Oregon S. L. R.R.*, 7 Idaho 355, 63 P. 112, 53 L.R.A. 744 (1900).

The right of distress damages feasant, which existed under the common law, is applicable in this state insofar as it is not repugnant to our laws or constitution. *Kelly v. Easton*, 35 Idaho 340, 207 P. 129, 26 A.L.R. 1042 (1922).

##### Fencing Out.

Landowner is not required to fence against sheep and swine. *Spencer v. Morgan*, 10 Idaho 542, 79 P. 459 (1905).

If landowner fails to "fence out" cattle lawfully at large, he may not recover for loss caused by such livestock straying upon his uninclosed land. *Strong v. Brown*, 26 Idaho 1, 140 P. 773, 52 L.R.A. (n.s.) 140, 1916E Ann. Cas. 482 (1914).

**Collateral References.** 4 Am. Jur. 2d, Animals, §§ 59-70.

3A C.J.S., Animals, §§ 58-62, 140, 159-164.

**25-2202. Perfecting lien.** — In order to perfect such a lien the person claiming it shall within twenty-four (24) hours of taking up the livestock, notify the owner, if known, and the county sheriff and local state brand inspector by the best means available. The sheriff and brand inspector shall make information concerning this lien available to the person claiming the lien and they shall attempt to notify the owner of the livestock of the lien and of this chapter by the best available means. The sheriff or state brand inspector shall identify the livestock and provide for the care and feeding of the livestock. They may, if they choose to do so, return such animals to the owner thereof until the viewers have made their decision. [I.C., § 25-2202, as added by 1978, ch. 168, § 2, p. 366.]

**Compiler's notes.** Former § 25-2202 was repealed. See Compiler's notes, § 25-2201.

**25-2203. Appointment of viewers.** — Within two (2) days after taking up the livestock the person claiming the lien shall appoint one (1) viewer. The owner of the livestock, if known, or if the owner is unknown or cannot be found, or refuses to make such appointment within three (3) days after the livestock have been taken up, then the sheriff, shall appoint another viewer. These two (2) viewers shall appoint a third viewer. If within two (2) days after their appointment the first two (2) viewers cannot agree upon a third viewer, the state brand inspector shall appoint the third viewer. [I.C., § 25-2203, as added by 1978, ch. 168, § 2, p. 366.]

**Compiler's notes.** Former § 25-2203 was repealed. See Compiler's notes, § 25-2201.



**25-2204. Determinations of viewers.** — It shall be the duty of the viewers by majority vote to determine within three (3) days after the appointment of the third viewer whether the person claiming the lien has a “legal fence” within the provisions of chapter 1, title 35, Idaho Code, entirely surrounding the enclosure. Any award of the viewers shall be itemized and made in writing, shall be signed by the viewers agreeing to it, and shall be made within the same three (3) day period within which they are to determine whether or not the enclosure has a “legal fence” surrounding it.

If it is determined that there is a “legal fence” the viewers shall then assess the lienholder’s damages and the costs of care and feeding the livestock and the other charges which are to be assessed as within the terms of the estray law, chapter 23, title 25, Idaho Code. Also, the viewers are entitled to receive mileage at the current rates then in effect for state employees. [I.C., § 25-2204, as added by 1978, ch. 168, § 2, p. 366.]

**Compiler’s notes.** Former § 25-2204 was repealed. See Compiler’s notes, § 25-2201.

**25-2205. Findings of amount due.** — The viewers may either determine the amount due to the lienholder as above provided for or refuse to make such a finding if the enclosure does not have a “legal fence” surrounding it, or award a nominal amount if it appears that there are minimal damages. If the enclosure does not have a “legal fence” surrounding it, the viewers may make a finding of costs against the person claiming the lien (as above provided), and the livestock shall at once be surrendered to the owner of the livestock, if known, without charge or further delay. [I.C., § 25-2205, as added by 1978, ch. 168, § 2, p. 366.]

**Compiler’s notes.** Former § 25-2205 was repealed. See Compiler’s notes, § 25-2201. The words in parentheses so appeared in the law as enacted.

**25-2206. Enforcement of finding.** — If the viewers make any finding under this chapter, enforcement of that finding may be either by a sale as provided under the estray law, chapter 23, title 25, Idaho Code, where the finding is against the livestock owner, or by court action. [I.C., § 25-2206, as added by 1978, ch. 168, § 2, p. 366.]

**Compiler’s notes.** Former § 25-2206 was repealed. See Compiler’s notes, § 25-2201.

**25-2207. Sale and distribution of proceeds.** — If the owner of the livestock cannot be found or is unknown, or if the owner of the livestock fails or refuses to pay any amount found against him within thirty (30) days after the viewers make such finding, such livestock may be sold in accordance with the estray law, chapter 23, title 25, Idaho Code. The state brand inspector or sheriff may pay the lienholder the amount of damages found for him, if such a finding has been made from the proceeds of any sale under the Idaho estray law, or may pay the costs of any proceedings under this act from the proceeds of such sale. Any balance remaining after the sale shall be paid to the owner of the livestock if known, or held as provided for by the

Idaho estray law, chapter 23, title 25, Idaho Code. [I.C., § 25-2207, as added by 1978, ch. 168, § 2, p. 366.]

**Compiler's notes.** Former § 25-2207 was repealed. See Compiler's notes, § 25-2201.

**25-2208. Livestock not to be moved.** — The livestock shall not be moved out of the county where the enclosure is to be found without the written approval of all three (3) viewers or upon court order. [I.C., § 25-2208, as added by 1978, ch. 168, § 2, p. 366.]

**Compiler's notes.** Former § 25-2208 was repealed. See Compiler's notes, § 25-2201.

**25-2209. Court proceedings.** — If either the person claiming the lien or the person owning the livestock commence any civil action in court in regard to the seizure of the livestock, the "viewer" proceedings taken under this chapter may be terminated by the court or the court may require an oral or written report from the viewers, if it chooses to do so, and may either accept the report and act upon it or take the matter on to trial de novo as the court determines. [I.C., § 25-2209, as added by 1978, ch. 168, § 2, p. 366.]

**25-2210. Penalties.** — Removal of the livestock from the custody of the sheriff, brand inspector or any person holding the livestock for the sheriff or brand inspector without payment in full of all charges or costs that have been incurred under this chapter shall be a misdemeanor and the livestock may be recovered to be disposed of as provided for by this chapter by the sheriff, brand inspector, or person authorized by either of them to hold the livestock. [I.C., § 25-2210, as added by 1978, ch. 168, § 2, p. 366.]

**25-2211. Viewers' qualifications.** — The viewers provided for by this chapter shall not be related to the person appointing that viewer by consanguinity [consanguinity] or affinity within the second degree under the civil system of determining relationship. [I.C., § 25-2211, as added by 1978, ch. 168, § 2, p. 366.]

**Compiler's notes.** The bracketed word "consanguinity" was inserted by the compiler.

## CHAPTER 23

### ESTRAYS

#### SECTION.

- 25-2301. Stray or estray defined.
- 25-2302. Duty of sheriff or brand inspector.
- 25-2303. Notification.
- 25-2304. Notice of sale.
- 25-2305. Notice of sale to owner.
- 25-2306. Claiming of stray livestock.
- 25-2307. Removal without payment prohibited.

#### SECTION.

- 25-2308. Sale of unclaimed animals.
- 25-2309. Charges for care, advertising and sale.
- 25-2310. Disposition of worthless estrays.
- 25-2311. Sale by brand inspector.
- 25-2312. Sale by sheriff — Subsequent claims.

**25-2301. Stray or estray defined.** — Stray or estray means any livestock whose owner is unknown or cannot be located, or any livestock whose owner is known but who permits livestock to roam at large on public or private lands contrary to law or regulation and without permission. [I.C., § 25-2301, as added by 1976, ch. 88, § 2, p. 299.]

**Compiler's notes.** Former chapter 23 comprising 1905, p. 366, §§ 1 (first part), 1a-1e, 1g, 1i-1k, 2, 3; 1907, p. 551, §§ 1 (first part), 1a-1e, 1g, 1i-1k; R.C., §§ 1299 (first part), 1299a-1299e, 1299g, 1299i-1299k, 1300, 1301; 1911, ch. 175, § 1; 1911, ch. 192, § 1; C.L., §§ 1299-1299e; 1299g, 1299i, 1299j, 1300, 1301, 1301a; 1919, ch. 160, § 1; 1919, ch. 177, §§ 1-3, 5; C.S., §§ 1995-2000, 2001-A, 2002,

2004-2010; 1921, ch. 120, § 1; 1925, ch. 14, § 1; 1925, ch. 53, § 1; 1927, ch. 61, §§ 1-5, 7, 9-11; I.C.A., §§ 24-2001 — 24-2015; 1933, ch. 173, § 4; 1933, ch. 201, § 1; 1947, ch. 119, §§ 1, 2; 1949, ch. 30, §§ 1, 2; 1974, ch. 133, §§ 1, 2, was repealed by S.L. 1976, ch. 88, § 1.

**Sec. to sec. ref.** This chapter is referred to in §§ 25-2201, 25-2204, 25-2206 and 25-2207.

**25-2302. Duty of sheriff or brand inspector.** — When a sheriff or brand inspector finds stray livestock or stray livestock are reported to him, he shall attempt to locate the owner and to notify the owner where the livestock may be found. If the owner refuses to, or does not take possession of the livestock within five (5) days after being notified of the location of the livestock, or if the owner is unknown or cannot be located, the sheriff or brand inspector shall seize the livestock or have some person hold and care for the livestock on behalf of the sheriff or brand inspector and the sheriff or brand inspector shall proceed to sell the livestock at a local public livestock market as provided for by law to the highest bidder for cash, after giving at least fifteen (15) days public notice of the sale. [I.C., § 25-2302, as added by 1976, ch. 88, § 2, p. 299.]

**Compiler's notes.** For repeal of former section see Compiler's notes to § 25-2301.

**25-2303. Notification.** — If a recognized brand or mark is found on stray livestock, the owner shall be notified by the best method available. If an unrecognized brand or brands or other marks are found on stray livestock, the local brand inspector or the state brand board shall be notified by the best method available. [I.C., § 25-2303, as added by 1976, ch. 88, § 2, p. 299.]

**Compiler's notes.** For repeal of former section see Compiler's notes to § 25-2301.

**25-2304. Notice of sale.** — Notice of the sale shall be given by advertising the stray livestock for sale at least twice in a daily newspaper of general circulation in the area where the livestock was found and is being held. The notice shall describe the livestock by giving number, marks, brands, approximate age, sex and any other distinguishing characteristics, and the notice shall describe when and where the livestock will be sold. [I.C., § 25-2304, as added by 1976, ch. 88, § 2, p. 299.]

**Compiler's notes.** For repeal of former section see Compiler's notes to § 25-2301.



**25-2305. Notice of sale to owner.** — If the owner of the stray livestock is known and can be located, a copy of the notice of sale shall be served upon the owner at least fifteen (15) days before the date of the sale. Service of the notice may be made by certified or registered mail. [I.C., § 25-2305, as added by 1976, ch. 88, § 2, p. 299.]

**Compiler's notes.** For repeal of former section see Compiler's notes to § 25-2301.

**25-2306. Claiming of stray livestock.** — The owner of the stray livestock make take possession of the livestock at any time prior to sale by proving ownership and paying the costs relative to taking up and caring for the animal or animals and the costs of advertising, inspection, etc., as set forth in section 25-2309, Idaho Code. [I.C., § 25-2306, as added by 1976, ch. 88, § 2, p. 299.]

**Compiler's notes.** For repeal of former section see Compiler's notes to § 25-2301.

**25-2307. Removal without payment prohibited.** — Removal of the estray livestock from the custody of the sheriff, brand inspector or any person holding the estray livestock for the sheriff or brand inspector without payment in full of all charges or costs that have been incurred under this chapter shall be a misdemeanor and the livestock may be recovered to be disposed of as provided for by this chapter by the sheriff, brand inspector or person authorized by either of them to hold the estray livestock. [I.C., § 25-2307, as added by 1976, ch. 88, § 2, p. 299.]

**Compiler's notes.** For repeal of former section see Compiler's notes to § 25-2301.

**25-2308. Sale of unclaimed animals.** — If the owner of stray livestock does not claim the animals before the day of sale or if the owner is unknown or cannot be located, the sheriff or brand inspector shall have the livestock sold pursuant to the notice of sale and shall execute and deliver a brand inspection certificate to the purchaser, stating that the livestock has been sold as estray to the purchaser, which certificate may thereafter be used by the purchaser to show ownership of the livestock sold. [I.C., § 25-2308, as added by 1976, ch. 88, § 2, p. 299.]

**Compiler's notes.** For repeal of former section see Compiler's notes to § 25-2301.

**25-2309. Charges for care, advertising and sale.** — The sheriff, brand inspector or person authorized by either of them to feed and care for stray livestock shall receive all actual expenses incurred; but food and care shall not be charged at a rate to exceed two dollars (\$2.00) per head per day for cattle and horses nor more than seventy-five cents (75¢) per head per day for other animals from the time that the sheriff or brand inspector is notified that the livestock has been taken up as estray. The sheriff or brand inspector

or livestock market shall receive like costs for any time during which the livestock are in their possession. The sheriff or brand inspector may also charge and receive mileage and inspection fees for inspecting any estray livestock for the purpose of determining ownership of the livestock at the rates provided for by law or regulation. Also, standard fees shall be payable for sale by the livestock market and for health and brand inspection and assessments or taxes for sale of livestock as provided for by law. [I.C., § 25-2309, as added by 1976, ch. 88, § 2, p. 299.]

**Compiler's notes.** For repeal of former section see Compiler's notes to § 25-2301.      **Sec. to sec. ref.** This section is referred to in §§ 25-2306 and 25-2312.

**25-2310. Disposition of worthless estrays.** — If in the judgment of a sheriff or brand inspector estray livestock is of no value or its value would be less than the cost of feed, care and sale of the livestock under this chapter, the sheriff or brand inspector may dispose of the livestock by private sale or by slaughter. If the owner of such livestock is known, he shall be personally notified of the proposed disposition of the livestock at least three (3) days before the livestock is privately sold or slaughtered. The owner may claim such livestock by paying the expenses incurred against it. [I.C., § 25-2310, as added by 1976, ch. 88, § 2, p. 299.]

**Compiler's notes.** For repeal of former section see Compiler's notes to § 25-2301.

**25-2311. Sale by brand inspector.** — If the estray livestock is sold by a brand inspector, he shall immediately advise the state brand inspector of all the particulars of the matter and account for the proceeds and forward the net proceeds of the sale to the state brand inspector to be placed in the unclaimed livestock account, to be handled as provided for by sections 25-1173 and 25-1174, Idaho Code, and the rules and regulations of the state brand board. The previous owner of the animal may make claim for the net proceeds as provided for by sections 25-1173 and 25-1174, Idaho Code. [I.C., § 25-2311, as added by 1976, ch. 88, § 2, p. 299; am. 1988, ch. 75, § 42, p. 111.]

**Compiler's notes.** For repeal of former section see Compiler's notes to § 25-2301.      Section 41 of S.L. 1988, ch. 75 is compiled as § 25-1736.

**25-2312. Sale by sheriff — Subsequent claims.** — If the estray livestock is sold by a sheriff, after deducting the costs provided for by this chapter, particularly by section 25-2309, Idaho Code, the net proceeds of the sale shall be forwarded to the county treasurer and the county treasurer shall hold the proceeds of the sale for six (6) months. At any time within the six (6) month period, any person claiming to be the owner of the animal sold may recover the net funds of the sale from the county treasurer by producing proof that the animal or animals were his property. Said proof shall be made before the sheriff who made the sale or his successor in office and for such purpose the sheriff is empowered to administer oaths to the claimant or his witnesses. Upon making such proof, the sheriff shall give the claimant an



order on the county treasurer, which order shall be retained until the six (6) month period has expired. If such claimant is the only person claiming the livestock, the county treasurer shall turn over such moneys to the claimant. If, however, there be more than one claimant for said moneys, then such contesting claimants must bring an action within three (3) months to determine who is the owner of the livestock sold. The action shall be brought in the magistrate or district court having jurisdiction of the matter. The claimant receiving judgment in his favor shall be entitled to said moneys. In case the ownership of the livestock be not proved, or there are no claims as to the ownership of such livestock, within the time provided, then the moneys in the hands of the county treasurer shall be forfeited to the school district where said animal or animals were taken up and shall, by the county treasurer, be turned over to such school district for the use of the school district. [I.C., § 25-2312, as added by 1976, ch. 88, § 2, p. 299.]

**Compiler's notes.** For repeal of former section see Compiler's notes to § 25-2301.

## CHAPTER 24

### HERD DISTRICTS

#### SECTION.

- 25-2401. Commissioners may create herd districts.
- 25-2402. Petition and requirements for district.
- 25-2403. Notice of hearing petition.
- 25-2404. Order creating district.
- 25-2405. Fences on agricultural lands adjacent to public domain — Cattle guards.

#### SECTION.

- 25-2406. Limitation on powers of commissioners.
- 25-2407. Violation of commissioners' order — Civil liability.
- 25-2408. Civil liability.
- 25-2409. Trespassing animals may be taken up.

**25-2401. Commissioners may create herd districts. —** (1) The board of county commissioners of each county in the state shall have power to create, modify or eliminate herd districts within such county as herein-after provided; and when such district is so created, modified or eliminated, the provisions of this chapter shall apply and be enforceable therein. On and after January 1, 1990, no county shall regulate or otherwise control the running at large of horses, mules, asses, cattle, sheep or goats within the unincorporated areas of the county unless such regulation or control is provided by the creation of a herd district pursuant to the provisions of this chapter, except as provided by subsection (2) of this section. The provisions of this chapter shall not apply to any herd district or herd ordinance in full force and effect prior to January 1, 1990, but shall apply to any modification thereof.

(2) A panel of five (5) members may be created in a county, the members of which shall be appointed as follows: two (2) members by appointment of the board of county commissioners; two (2) members by appointment of a local, county or state livestock association or associations; and the fifth member, by concurrent appointment of the first four (4) appointees. Only if a majority of said panel, after a public hearing held with notice as prescribed



by law, concludes that the creation, modification or elimination of a herd district is insufficient to control or otherwise regulate the movement of livestock in an area, the board of county commissioners shall have power to establish such control by ordinance, provided that the cost of construction and maintenance of any fencing or cattle guards required by said ordinance shall be paid by the county current expense fund. Notwithstanding any provision of law to the contrary, a county shall have the authority to levy an annual property tax of not to exceed two hundredths percent (.02%) of market value for assessment purposes on taxable real property within the county, and the revenues derived therefrom shall not be used for any other purpose. [1907, p. 126, § 1; reen. R.C. & C.L., § 1302; C.S., § 2011; I.C.A., § 24-2101; am. 1990, ch. 222, § 1, p. 589; am. 1996, ch. 322, § 4, p. 1029.]

**Compiler's notes.** Section 3 of S.L. 1996, ch. 322 is compiled as § 22-2406.

**Cross ref.** Barbed wire, careless exposure unlawful, notice to owner, civil and criminal liability, §§ 35-301 — 35-305.

Establishment, modification or dissolution of herd districts, presumption of validity, § 31-857.

Forest, wildlife and range experiment station, to conduct cooperative investigation and research with the state livestock commission, § 38-703; to conduct investigations and research into the production, protection, utilization and management for continuous use of all forage and range resources on the wild and forest lands, § 38-710.

Lawful fences, §§ 35-101, 35-102.

Limitation on powers of commissioners, § 25-2406.

Partition fences, §§ 35-103 — 35-112.

Quartz mills, fencing of reservoirs and dumps, liability for failure to inclose, §§ 35-201, 35-202.

Seeding of burned-over areas to range grasses and legumes, § 38-501 et seq.

**Sec. to sec. ref.** This section is referred to in § 25-2406.

**Cited in:** Soran v. Schoessler, 87 Idaho 425, 394 P.2d 160 (1964); Nottingham v. McCormick, 95 Idaho 188, 505 P.2d 1260 (1973).

#### ANALYSIS

Creation by ordinance.

De facto herd district forbidden.

Local livestock regulation.

Modification by court.

Purpose.

#### Creation by Ordinance.

Creation of a herd district by ordinance is within the power of the county commissioners. Miller v. Miller, 113 Idaho 415, 745 P.2d 294 (1987).

#### De Facto Herd District Forbidden.

The trial court erred in restricting the right

of livestock owners to roam stock to only those areas where by custom, license, or permit livestock are grazed or permitted to roam, since the adoption of such a rule creates de facto herd districts in areas where by custom livestock have not been permitted to roam and thereby render § 25-2401 et seq. unnecessary; the trial court, in effect, applied herd district rules relating to liability for roaming livestock to these areas without requiring the creation of a herd district. Maguire v. Yanke, 99 Idaho 829, 590 P.2d 85 (1978).

#### Local Livestock Regulation.

The herd district statutes were not intended to preempt, and do not preempt, the field of livestock regulation so as to preclude local regulation; herd district statutes which by their own terms are inapplicable to "open range" areas do not preempt the field of livestock control in such areas. Benewah County Cattlemen's Ass'n v. Board of County Comm'rs, 105 Idaho 209, 668 P.2d 85 (1983).

Even if it be assumed for the purpose of discussion that the herd district statutes in some degree addressed the same problems as those addressed by a county ordinance prohibiting livestock from roaming, local enactments which merely extend the state law by way of additional restrictions or limitations are not invalid. Benewah County Cattlemen's Ass'n v. Board of County Comm'rs, 105 Idaho 209, 668 P.2d 85 (1983).

The legislature contemplated a process whereby a majority of the landowners in an area could compel the county to create herd districts and thereby place upon livestock owners within such districts the duty to fence in their stock; there is nothing in that statutory scheme indicating counties may not exercise their police power to control roaming livestock, but rather must ignore any problem and wait until action is forced upon the county by the presentation of a petition for the formation of a herd district. Benewah County Cattlemen's Ass'n v. Board of County Comm'rs, 105 Idaho 209, 668 P.2d 85 (1983).

**Modification by Court.**

The district court's modification of the herd district boundaries by exclusion of federal lands was improper as an exercise of a legislative function by the court; the district court properly should have simply ruled that the herd district was invalid due to the inclusion of federal land. *Miller v. Miller*, 113 Idaho 415, 745 P.2d 294 (1987).

**Purpose.**

The intent of the legislature in enacting

§ 25-2401 et seq. was that for areas where the historical use has been one of enclosed lands, the landowners in that area must petition and vote to designate that area a herd district in order to change the Idaho law regarding liability for damage by roaming livestock. *Maguire v. Yanke*, 99 Idaho 829, 590 P.2d 85 (1978).

**Collateral References.** 4 Am. Jur. 2d, Animals, §§ 48-54.

3A C.J.S., Animals, § 139.

**25-2402. Petition and requirements for district.** — (1) A majority of the owners of taxable real property, including corporations, in any area or district described by metes and bounds and who are also domiciled and resident in the state of Idaho, may petition the board of county commissioners in writing to create, modify or eliminate a herd district in such area; provided, that in the case of a petition for the purpose of eliminating an existing district or any portion thereof, said area must be contiguous to open range. Such petition shall describe the boundaries of the said proposed herd district, and shall designate what animals of the species of horses, mules, asses, cattle, swine, sheep and goats it is desired to prohibit from running at large, also prohibiting said animals from being herded upon the public highways in such district; and shall designate that the herd district shall not apply to nor cover livestock, excepting swine, which shall roam, drift or stray from open range into the district unless the district shall be inclosed by lawful fences and cattle guards as needed in roads penetrating the district so as to prevent livestock, excepting swine, from roaming, drifting or straying from open range into the district; and may designate the period of the year during which it is desired to prohibit such animals from running at large, or being herded on the highways. Such petition may also state the conditions and location(s), if any, for the construction of legal fences and cattle guards which may be required to prohibit the running at large of livestock within the interior of the proposed district; provided, that if such petition does not address the issue of interior fencing and cattle guards, the board of county commissioners shall have the power to establish such internal fencing requirements upon their approval of a proposed district. Provided, any herd district heretofore established shall retain its identity, geographic definition, and remain in full force and effect, until vacated or modified hereafter as provided by section 25-2404, Idaho Code.

(2) Notwithstanding any other provision of law to the contrary, no herd district shall:

- (a) Contain any lands owned by the United States of America or the state of Idaho, upon which the grazing of livestock has historically been permitted.
- (b) Result in the state, a county, a city or a highway district being held liable for personal injury, wrongful death or property damage resulting from livestock within the public right-of-way.
- (c) Prohibit trailing or driving of livestock from one location to another on public roads or recognized livestock trails.



(3) Open range means all uninclosed lands outside cities and villages upon which by custom, license or otherwise, livestock, excepting swine, are grazed or permitted to roam.

(4) The owners of taxable real property within the herd district shall:

(a) Pay the costs, including on private land, of constructing and maintaining legal fences as required on the district's border with open range so as to prevent livestock, excepting swine, from roaming, drifting or straying from open range into the district.

(b) Pay the costs, including on private land, of constructing and maintaining cattle guards as required on the district's border with open range so as to prevent livestock, excepting swine, from roaming, drifting or straying from open range into the district; except that the costs of maintaining a cattle guard located on a public right-of-way shall thereafter be paid by the state, county, city or highway district responsible for maintaining said right-of-way.

(c) Pay seventy-five percent (75%) of the costs, including on private land, of constructing legal fences required, at the time of the creation or modification of the district only, to control livestock within the interior of the district; provided that (i) the costs of maintaining such fences shall thereafter be paid by the owner(s) of the land on which the fencing is constructed as prescribed by chapter 1, title 35, Idaho Code, and that (ii) the costs of constructing and maintaining fences on livestock operations which come into existence after the creation or modification of the district shall be paid by owner(s) of the land on which the fencing is constructed as prescribed by chapter 1, title 35, Idaho Code.

(d) Pay seventy-five percent (75%) of the costs, including on private land, of constructing legal cattle guards required, at the time of the creation or modification of the district only, to control livestock within the interior of the district; provided that (i) the costs of maintaining a cattle guard located on a public right-of-way shall thereafter be paid by the state, county, city or highway district responsible for maintaining the public right-of-way on which the cattle guard is located, or, in the case of a cattle guard located on private land, by the owner(s) of the land on which the cattle guard is constructed as prescribed by chapter 1, title 35, Idaho Code, and that (ii) the costs of constructing and maintaining cattle guards on livestock operations which come into existence after the creation or modification of the district shall be paid by the owner(s) of the land on which the cattle guard is constructed as prescribed by chapter 1, title 35, Idaho Code.

(e) In the case of a new herd district created contiguous to an existing herd district, there shall be no obligation to maintain a legal fence or cattle guards on the border between the new district and the existing district, except to the extent that said fence or cattle guards, or any portion thereof, may be required to control movement of livestock on the interior of the district. In the case of a modification of an existing herd district which alters its borders with open range, there shall be no obligation to maintain a legal fence or cattle guards on its previous border with open range, except to the extent that said fence or cattle guards, or



any portion thereof, may be required to control movement of livestock on the interior of the district.

(5) In the case of interior fencing and cattle guards as described in subsections (4)(c) and (d), the owner(s) of private land on which such fencing or cattle guards are constructed shall pay twenty-five percent (25%) of the total cost of their construction, provided that the share of that total cost to be paid by each individual landowner shall be as prescribed by chapter 1, title 35, Idaho Code.

(6) Notwithstanding any provision of law to the contrary, a county shall have the authority to and shall levy an annual property tax not to exceed six hundredths percent (.06%) of market value for assessment purposes on taxable real property within the district for the costs of constructing and maintaining the legal fencing and cattle guards required by the creation or modification of such a herd district; provided that a herd district created on or after January 1, 1990, shall have no force and effect unless and until such a levy is approved, and provided that the revenues derived therefrom may not be used for any other purpose. In the case of a new herd district contiguous to an existing herd district, said levy shall apply, for purposes of constructing legal fences and cattle guards required by the new district, only to owners of taxable real property residing within the new district; but for purposes of maintaining thereafter fences as required on the district's border with open range, shall apply to owners of taxable real property residing within both the new district and the existing district to which it is contiguous. [1907, p. 126, § 2, reen. R.C. & C.L., § 1303; am. 1919, ch. 184, § 1, p. 565; C.S., § 2012; I.C.A., § 24-2102; am. 1935, ch. 90, § 1, p. 171; am. 1947, ch. 75, § 1, p. 120; am. 1953, ch. 118, § 1, p. 172; am. 1963, ch. 264, § 1, p. 674; am. 1983, ch. 120, § 1, p. 313; am. 1985, ch. 56, § 1, p. 109; am. 1990, ch. 222, § 2, p. 589; am. 1996, ch. 322, § 5, p. 1029.]

#### **Compiler's notes.**

Section 6 of S.L. 1996, ch. 322 is compiled as § 27-121.

Section 73 of S.L. 1996, ch. 322 provided that this act shall be in full force and effect on and after January 1, 1997.

**Cited in:** *Nelson v. Holdaway Land & Cattle Co.*, 107 Idaho 550, 691 P.2d 796 (Ct. App. 1984).

#### **ANALYSIS**

Alternative to fencing.

County police power.

Creation of herd districts.

—Inclusion of federal land.

—Modification by court.

Duty of owner.

Effect of creation of herd district.

Enclosure of district by fences.

Open range.

Purpose.

Trailed or driven.

#### **Alternative to Fencing.**

A herd district provides an alternative to landowners who wish to protect their land

from damage caused by roaming stock but do not wish, or cannot afford, to fence their land. *Easley v. Lee*, 111 Idaho 115, 721 P.2d 215 (1986).

#### **County Police Power.**

The legislature contemplated a process whereby a majority of the landowners in an area could compel the county to create herd districts and thereby place upon livestock owners within such districts the duty to fence in their stock; there is nothing in that statutory scheme indicating counties may not exercise their police power to control roaming livestock, but rather must ignore any problems and wait until action is forced upon the county by the presentation of a petition for the formation of a herd district. *Benewah County Cattlemen's Ass'n v. Board of County Comm'rs*, 105 Idaho 209, 668 P.2d 85 (1983).

#### **Creation of Herd Districts.**

Herd districts may still be created in any area not within "open range" as defined in this section. *Maguire v. Yanke*, 99 Idaho 829, 590 P.2d 85 (1978).

Herd districts may not be created *sua sponte* by a county but only in response to a petition of a majority of the landowners within a certain area and the creation of a herd district imposes civil liability upon livestock owners when their stock trespasses on the land of another; county ordinance prohibiting livestock from running at large, on the other hand, expressly provided that it should not apply to the resolution of any civil liability and, hence, the purpose and effect of the ordinance in question were different from the purpose and effect of a herd district and the ordinance did not constitute the *de facto* creation of a herd district. *Benewah County Cattlemen's Ass'n v. Board of County Comm'rs*, 105 Idaho 209, 668 P.2d 85 (1983).

The requirement of this section, requiring a herd district to be enclosed by a lawful fence, could not under the provisions of § 25-2404, be removed in the county commissioners' order forming the herd district. *Easley v. Lee*, 111 Idaho 115, 721 P.2d 215 (1986).

Creation of a herd district by ordinance is within the power of the county commissioners. *Miller v. Miller*, 113 Idaho 415, 745 P.2d 294 (1987).

#### —Inclusion of Federal Land.

Where the county commissioners by ordinance purported to create a herd district which contained parcels of federal land within its boundaries, the ordinance conflicted with subdivision (2)(a) of this section, and a valid herd district was not created. *Miller v. Miller*, 113 Idaho 415, 745 P.2d 294 (1987).

#### —Modification by Court.

The district court's modification of the herd district boundaries by exclusion of federal lands was improper as an exercise of a legislative function by the court; the district court properly should have simply ruled that the herd district was invalid due to the inclusion of federal land. *Miller v. Miller*, 113 Idaho 415, 745 P.2d 294 (1987).

#### Duty of Owner.

Although animals may roam freely in open range areas without their owner's risking liability, such is not the case in herd districts, where animals may not roam freely and owners incur a duty to keep livestock fenced. *Adamson v. Blanchard*, 133 Idaho 602, 990 P.2d 1213 (1999).

#### Effect of Creation of Herd District.

The creation of a herd district in Idaho reinstates the English common law within that district, placing a duty on the livestock owner to fence in his stock and holding him liable for damages caused if his stock escapes onto another's land, regardless of whether that land is fenced or not. *Maguire v. Yanke*, 99 Idaho 829, 590 P.2d 85 (1978).

Once a herd district is created, the rule of fencing out, which requires landowners to keep out another's livestock by construction of a fence no longer applies; rather, an owner of stock who allows animals to run at large in a herd district is guilty of a misdemeanor, and additional civil liability is imposed for damage caused by trespasses of such animals without regard to the condition of the landowner's fence. *Easley v. Lee*, 111 Idaho 115, 721 P.2d 215 (1986).

#### Enclosure of District by Fences.

A herd district, and the liabilities resulting from the formation of a herd district, do not apply to livestock, excepting swine, that roam, drift or stray from open range into the herd district, unless the herd district is enclosed by lawful fences and cattle guards in roads penetrating the district. *Easley v. Lee*, 111 Idaho 115, 721 P.2d 215 (1986).

#### Open Range.

The unenclosed lands within a county but outside cities and villages clearly fell within the definition of "open range" and, hence, the county had no authority to create a herd district. *Benewah County Cattlemen's Ass'n v. Board of County Comm'rs*, 105 Idaho 209, 668 P.2d 85 (1983).

A rancher has the right to allow his cattle to roam, and he is not liable for injuries caused by ranging livestock on another's unenclosed lands; but, the owner of the unfenced property is not liable for the injury to the livestock of another ranging on his premises. *Bybee v. Clark*, 118 Idaho 254, 796 P.2d 131 (1990).

A rancher has the right to allow his cattle to roam, and he is not liable for injuries caused by ranging livestock on another's unenclosed lands; but, the owner of the unfenced property is not liable for the injury to the livestock of another ranging on his premises. *Bybee v. Clark*, 118 Idaho 254, 796 P.2d 131 (1990).

#### Purpose.

The passage of this section and § 25-2118, with their accompanying definition of "open range" in terms of historical use, was not intended to and does not change the law of this State that with the exception of cities, villages, and herd districts, livestock may run at large and graze upon unenclosed lands in this State. *Maguire v. Yanke*, 99 Idaho 829, 590 P.2d 85 (1978).

The purpose of the herd district statutes is to provide an alternative to landowners who wish to protect their land from damage caused by roaming stock but do not desire, or are unable, to afford fencing out stray cattle. *Etchevery Sheep Co. v. J.R. Simplot Co.*, 113 Idaho 15, 740 P.2d 57 (1987).

#### Trailed or Driven.

Where the sheep were in a shoulder-to-



shoulder, close formation under the direction of several drivers, the sheep were not being "herded" upon the highway, but instead were being "trailed" or "driven" by the men in charge of the move. *Etcheverry Sheep Co. v. J.R. Simplot Co.*, 113 Idaho 15, 740 P.2d 57 (1987).

Although animals may not be herded upon the highway in a herd district, the driving of livestock from one location to another on public roads is not prohibited. *Adamson v. Blanchard*, 133 Idaho 602, 990 P.2d 1213 (1999).

**25-2403. Notice of hearing petition.** — It shall be the duty of the board of county commissioners, after such petition has been filed, to set a date for hearing said petition, notice of which hearing shall be given by posting notices thereof in three (3) conspicuous places in the proposed herd district, and by publication for two (2) weeks previous to said hearing in a newspaper published in the county nearest the proposed herd district. [1907, p. 126, § 3; reen. R.C. & C.L., § 1304; C.S., § 2013; I.C.A., § 24-2103.]

**Cross ref.** Publication requirements, § 60-109.

**Cited in:** *Nelson v. Holdaway Land & Cattle Co.*, 107 Idaho 550, 691 P.2d 796 (Ct. App. 1984).

#### **Notice Required.**

Herd district created without posting no-

**Collateral References.** 3A C.J.S., Animals, § 143.

Section 2 of S.L. 1953, ch. 118 is compiled as § 25-2404.

Section 3 of S.L. 1990, ch. 222 is compiled as § 25-2407.

Section 6 of S.L. 1996, ch. 322 is compiled as § 27-121.

Section 73 of S.L. 1996, ch. 322 provided that this act shall be in full force and effect on and after January 1, 1997.

tices required by this section is invalid. *State v. Catlin*, 33 Idaho 437, 195 P. 628 (1921).

**Collateral References.** 3A C.J.S., Animals, § 145.

**25-2404. Order creating district.** — At such hearing, if satisfied that a majority of the landowners owning more than fifty percent (50%) of the land in said proposed herd district who are resident in, and qualified electors of, the state of Idaho are in favor of the enforcement of the herd law therein, and that it would be beneficial to such district, the board of commissioners shall make an order creating such herd district, in accordance with the prayer of the petition, or with such modifications as it may choose to make. Such order shall specify a certain time at which it shall take effect, which time shall be at least thirty (30) days after the making of said order; and said order shall continue in force, according to the terms thereof, until the same shall be vacated or modified by the board of commissioners, upon the petition of a majority of the landowners owning more than fifty percent (50%) of the land in said district who are resident in, and qualified electors of, the state of Idaho. [1907, p. 126, § 4; reen. R.C. & C.L., § 1305; C.S., § 2014; I.C.A., § 24-2104; am. 1947, ch. 75, § 2, p. 120; am. 1953, ch. 118, § 2, p. 172.]

**Compiler's notes.** Section 1 of S.L. 1953, ch. 118 is compiled as § 25-2402.

**Sec. to sec. ref.** This section is referred to in §§ 25-2402, 25-2407 and 25-2408.

#### **Enclosure of District by Fence.**

The requirement of § 25-2402, requiring a

herd district to be enclosed by a lawful fence, could not under the provisions of this section, be removed in the county commissioners' order forming the herd district. *Easley v. Lee*, 111 Idaho 115, 721 P.2d 215 (1986).



**25-2405. Fences on agricultural lands adjacent to public domain — Cattle guards.** — The board of county commissioners may provide as a condition in any order creating a herd district which may hereafter be made that any agricultural lands in the proximity of public domain where cattle, horses or mules are grazed, shall be inclosed by a lawful fence and that any road extending from agricultural area to such public domain shall contain cattle guards or gates at such places and of such nature as the board shall prescribe. The board of county commissioners may make its herd district orders inapplicable to cattle, horses or mules straying from such public domain or along roads leading to such public domain until such agricultural lands are inclosed by lawful fence and such cattle guards or gates are installed. [I.C.A., § 24-2104A, as added by 1947, ch. 74, § 1, p. 119.]

**Cross ref.** Cattle guards across roads in grazing country, landowners may erect, § 40-2310.

Fences along railroads, public utilities commission may require, § 62-1201 et seq.

Fences generally, § 35-101 et seq.

Gates on public highways, § 40-2320.

Passageways for stock under highways, § 40-2314.

Removal of fences when highway altered or new highway opened, § 40-2317.

Trails for livestock, laying out highways, and rules concerning use, § 40-2313.

**Cited in:** Petricevich v. Salmon River Canal Co., 92 Idaho 865, 452 P.2d 362 (1969).

#### ANALYSIS

##### Liability.

When fences are required.

##### Liability.

A rancher has the right to allow his cattle to roam, and he is not liable for injuries caused by ranging livestock on another's unenclosed lands; but, the owner of the unfenced property is not liable for the injury to the livestock of another ranging on his premises. *Bybee v. Clark*, 118 Idaho 254, 796 P.2d 131 (1990).

##### When Fences Are Required.

Unless within a herd district, Idaho law requires neither the livestock owner nor the land owner to fence. *Bybee v. Clark*, 118 Idaho 254, 796 P.2d 131 (1990).

**25-2406. Limitation on powers of commissioners.** — The provisions of sections 25-2401 and 25-2405 shall not be construed to confer upon the board of county commissioners any jurisdiction over animals otherwise prohibited from running at large under existing laws. [1907, p. 126, § 5; reen. R.S. & C.L., § 1306; C.S., § 2015; I.C.A., § 24-2105.]

**25-2407. Violation of commissioners' order — Civil liability.** — Any person who shall, in violation of any order made pursuant to the provisions of section 25-2404, Idaho Code, permit or allow any of the animals designated in such order, owned by him or under his control, to run at large in such herd district, or to be herded on the said highway, shall be deemed guilty of a civil offense, for which, within a period of one (1) year, law enforcement officials shall issue a warning on at least the first and second such offense, and thereafter, for which a civil penalty of not to exceed fifty dollars (\$50.00) may be imposed per animal unit in violation, the aggregate of which shall not exceed five hundred dollars (\$500), plus restitution to the owner for any damage to property. The pendency of any such action shall not prevent nor prejudice the bringing of another action against the same party for a violation of such order committed after the commencement of such pending action. For purposes of this section, an animal unit shall be as

defined, at the time of such violation, by federal and state agencies which administer the grazing of livestock on public lands. [1907, p. 126, § 6; reen. R.C. & C.L., § 1307; am. 1919, ch. 184, § 1, p. 565; C.S., § 2016; I.C.A., § 24-2106; am. 1990, ch. 222, § 3, p. 589.]

**Compiler's notes.** Section 2 of S.L. 1990, ch. 222 is compiled as § 25-2402.

Section 4 of S.L. 1990, ch. 222 declared an emergency and provided that the act should be in effect upon its passage and approval retroactive to January 1, 1990. Approved April 5, 1990.

#### ANALYSIS

Effect of creation of district.

Enclosure of district by fences.

#### Effect of Creation of District.

Once a herd district is created, the rule of fencing is out which requires landowners to keep out another's livestock by construction of a fence no longer applies; rather, an owner of stock who allows animals to run at large in a

herd district is guilty of a misdemeanor, and additional civil liability is imposed for damage caused by trespasses of such animals without regard to the condition of the landowner's fences. *Easley v. Lee*, 111 Idaho 115, 721 P.2d 215 (1986).

#### Enclosure of District by Fences.

A herd district, and the liabilities resulting from the formation of a herd district, do not apply to livestock, excepting swine, that roam, drift or stray from open range into herd district, unless the herd district is enclosed by lawful fences and cattle guards in roads penetrating the district. *Easley v. Lee*, 111 Idaho 115, 721 P.2d 215 (1986).

**Collateral References.** 3A C.J.S., Animals, §§ 168, 169.

**25-2408. Civil liability.** — The owner of animals permitted or allowed to run at large, or herded in violation of any order made in accordance with the provisions of section 25-2404, shall be liable to any person who shall suffer damage from the depredations or trespasses of such animals, without regard to the condition of his fence; and the person so damaged shall have a lien upon said animals for the amount of damage done, and the cost of the proceedings to recover the same, and may take the animals into custody until all such damages are paid: provided, that the person so taking said animals into custody shall not have the right to retain the same for more than five (5) days without commencing an action against the owner thereof for such damages. Said damages may be recovered by a civil action before any court of competent jurisdiction, and no such action shall be defeated or affected by reason of any criminal action commenced or prosecuted against the same party under the provisions of the preceding section. [1907, p. 126, § 7; reen. R.C. & C.L., § 1308; am. 1919, ch. 184, § 1, p. 566; C.S., § 2017; I.C.A., § 24-2107.]

#### ANALYSIS

Alternative to fencing.

Burden of proof.

Cost for care of livestock.

Damages.

Effect of creation of district.

Enclosure of district by fences.

Evidence.

Hearing.

Presumption of negligence.

#### Alternative to Fencing.

A herd district provides an alternative to landowners who wish to protect their land from damage caused by roaming stock but do not wish, or cannot afford, to fence their land.

*Easley v. Lee*, 111 Idaho 115, 721 P.2d 215 (1986).

#### Burden of Proof.

Where the presence of animal on highway in herd district resulted in injury, owner of animal was liable therefor unless he could satisfactorily explain the animal's presence on the highway. *Corthell v. Pearson*, 88 Idaho 295, 399 P.2d 266 (1965).

#### Cost for Care of Livestock.

Pursuant to this section, the plaintiff can recover the reasonable costs of caring for the livestock lawfully retained for a reasonable period. *Nelson v. Holdaway Land & Cattle*



Co., 107 Idaho 550, 691 P.2d 796 (Ct. App. 1984).

#### **Damages.**

The district court did not err in awarding nominal damages for damages caused by a previous trespass where the landowner failed to prove actual damages. *Nelson v. Holdaway Land & Cattle Co.*, 111 Idaho 1035, 729 P.2d 1098 (Ct. App. 1986).

#### **Effect of Creation of District.**

Once a herd district is created, the rule of fencing out which requires landowners to keep out another's livestock by construction of a fence no longer applies; rather, an owner of stock who allows animals to run at large in a herd district is guilty of a misdemeanor, and additional civil liability is imposed for damage caused by trespasses of such animals without regard to the condition of the landowner's fence. *Easley v. Lee*, 111 Idaho 115, 721 P.2d 215 (1986).

#### **Enclosure of District by Fences.**

A herd district, and the liabilities resulting from the formation of a herd district, do not apply to livestock, excepting swine, that roam, drift or stray from open range into the herd district, unless the herd district is enclosed by lawful fences and cattle guards in roads penetrating the district. *Easley v. Lee*, 111 Idaho 115, 721 P.2d 215 (1986).

#### **Evidence.**

A finding is not clearly erroneous if it is

supported by substantial and competent, though conflicting, evidence; thus, where the testimony and exhibits revealed a wheat field heavily infested with weeds, and one or more of several causes, all supported by the record, could have brought the weeds to the field including farm equipment, wild animals, other livestock, and plaintiff's own farming practices, and testimony at trial indicated that factors other than the weeds, such as the late harvest, contributed to the reduced yield, the trial court's findings that plaintiff's field was in poor condition before the cattle trespass and that other factors could have caused the weed infestation was not clearly erroneous. *Nelson v. Holdaway Land & Cattle Co.*, 107 Idaho 550, 691 P.2d 796 (Ct. App. 1984).

#### **Hearing.**

The court did not abuse its discretion in refusing to allow an evidentiary hearing in place of the requested written proposals as an aid in determining damages. *Nelson v. Holdaway Land & Cattle Co.*, 111 Idaho 1035, 729 P.2d 1098 (Ct. App. 1986).

#### **Presumption of Negligence.**

Where defendant's horse was upon the roadway in a herd district, there was a presumption of negligence in letting the horse run free, which the defendant, who could offer no explanation of freedom of his horse, did not overcome. *Cunningham v. Bundy*, 100 Idaho 456, 600 P.2d 132 (1979).

**25-2409. Trespassing animals may be taken up.** — Any person may take into custody any of the animals specified in the said order of the board of commissioners that may be about to commit a trespass upon the premises owned, occupied or in charge of such person, and retain the same until all reasonable charges for keeping said animals are paid: provided, that it shall be the duty of the person so taking said animals into custody to notify the owner or person in charge of the same within five (5) days thereafter, and if the owner or person in charge of them shall not be known to the person so taking said animals into custody, and cannot be found after diligent search and inquiry, he may proceed in the manner provided for the taking up and disposal of estrays. [1907, p. 126, § 8; reen. R.C. & C.L., § 1309; C.S., § 2018; I.C.A., § 24-2108.]

**Cross ref.** Taking up and disposal of estrays, §§ 25-2301 — 25-2312.

**Collateral References.** 3A C.J.S., Animals, §§ 159-164.



## CHAPTER 25

## IDAHO HORSE BOARD

## SECTION.

25-2501. Board created.  
25-2502. Officers — Meetings — Expenses.  
25-2503. Definitions.  
25-2504. Powers and duties.  
25-2505. Assessments — Collection.

## SECTION.

25-2506. Deposit and disbursement of funds.  
25-2507. Bonding — Records — Audits.  
25-2508. Assessment liens.  
25-2509. Assessment is mandatory.  
25-2510. Referendum for horse owners.

**25-2501. Board created.** — (1) There is hereby created in the department of self-governing agencies the Idaho horse board. The board shall be composed of seven (7) members, each of whom shall be appointed by the governor from a list of nominees recommended by the Idaho horse council. The horse council shall recommend at least four (4) names for each appointment, and the governor shall appoint from the nominees recommended. The membership of the board shall consist at all times of members representing the following interests:

- (a) Two (2) members shall at all times be representative of horse racing interests;
- (b) One (1) member shall at all times be representative of trail pleasure riding interests and one (1) member shall at all times be representative of general horse interests;
- (c) Two (2) members shall at all times be representative of show interests; and
- (d) One (1) member shall at all times be representative of breeding interests.

(2) Each member of the board shall be a citizen of the United States and a bona fide resident of this state, and a member of the Idaho horse council. During a term of office, a member must continue to possess all of the qualifications necessary for appointment. Failure to maintain such qualifications shall be cause for removal from office. The governor may remove any board member at will.

(3) On July 1, 1987, the governor shall appoint three (3) members, each for a term of one (1) year; two (2) members, each for a term of two (2) years; and two (2) members each for a term of three (3) years. Thereafter, the term of office shall be three (3) years.

(4) Vacancies in any unexpired term shall be filled by appointment by the governor for the remainder of the unexpired term. The member appointed to fill a vacancy shall represent the same interest as the member whose office has become vacant from a list of four (4) nominees submitted by the Idaho horse council. [I.C., § 25-2501, as added by 1987, ch. 214, § 1, p. 457.]

**Compiler's notes.** Former §§ 25-2501 — 25-2508, which comprised S.L. 1927, ch. 250, §§ 1-8, p. 413; I.C.A., §§ 24-2201 — 24-2208; am. 1937, ch. 105, §§ 1, 2, p. 157; am. 1945,

ch. 13, §§ 1, 2, p. 17, were repealed by S.L. 1950 (1st E.S.), ch. 50, § 26, p. 61, and S.L. 1951, ch. 250, § 27, p. 527.

**25-2502. Officers — Meetings — Expenses.** — (1) The board shall annually elect a chairman, a vice-chairman and a secretary-treasurer from among its members. The board shall meet regularly once each six (6) months, and at such other times as called by the chairman or when requested by two (2) or more members of the board.

(2) In the performance of official duties, each board member shall be compensated as provided in section 59-509(f), Idaho Code.

(3) No funds raised pursuant to section 25-2505, Idaho Code, shall be used for travel or expenses outside the state of Idaho. [I.C., § 25-2502, as added by 1987, ch. 214, § 1, p. 457.]

**Compiler's notes.** Former § 25-2502 was repealed. See Compiler's notes, § 25-2501.

**25-2503. Definitions.** — As used in this chapter, unless the context requires otherwise:

(1) The term "board" means the Idaho horse board.

(2) The term "brand board" means the state brand board.

(3) The term "breeding interest" means an interest in horses owned primarily for the purpose of horse reproduction.

(4) The term "general horse interest" means those who actively use horses in a work capacity including, but not limited to, range work, sales yards, feedlots or other related work.

(5) The term "horse" means the equine species.

(6) The term "horse racing interest" means an interest in horses owned primarily for the purpose of racing.

(7) The term "pleasure trail riding interest" means an interest in horses owned primarily for the purpose of pleasure trail riding.

(8) The term "show interest" means an interest in horses owned primarily for the purpose of showing horses at competitive events; i.e., shows, competitive trails or rodeos. [I.C., § 25-2503, as added by 1987, ch. 214, § 1, p. 457.]

**Compiler's notes.** Former § 25-2503 was repealed. See Compiler's notes, § 25-2501.

**25-2504. Powers and duties.** — The board shall have the following powers and duties:

(1) To conduct scientific research for the benefit of the health of the horse;

(2) To enter into contracts which it deems appropriate in carrying out the promotion of the horse industry of this state;

(3) To sue and be sued as a board, without individual liability of the board members, when the board is acting within the scope of the powers of the board;

(4) To make grants, donations, or contributions to any agency which will promote the horse industry of this state on a national, state or local level;

(5) To employ subordinate officers and employees of the board, prescribe their duties and fix their compensation;

(6) To accept grants, donations, contributions or gifts, from any source for expenditures for any purpose consistent with the provisions of this chapter;

(7) To prepare each year a proposed budget of the board for the next succeeding fiscal year, and to provide upon request a copy of the proposed budget to any person who pays an assessment under this chapter;

(8) To adopt, rescind, modify or amend all proper functional regulations, orders, and resolutions for the exercise of its powers and duties, which shall be provided to anyone upon request; and

(9) To conduct public relations programs for the horse industry. [I.C., § 25-2504, as added by 1987, ch. 214, § 1, p. 457.]

**Compiler's notes.** Former § 25-2504 was repealed. See Compiler's notes, § 25-2501.

**25-2505. Assessments — Collection.** — (1) There is hereby levied and imposed upon all horses an assessment of three dollars (\$3.00) per head to be paid by the owner. The assessment shall revert to one dollar (\$1.00) if the referendum held as provided in section 25-2510(1), Idaho Code, results in a majority vote opposing the three dollar (\$3.00) assessment. A reversion to a one dollar (\$1.00) assessment shall be effective on the date the director of the department of agriculture announces, as provided in section 25-2510, Idaho Code, that the referendum resulted in a majority vote opposing the three dollar (\$3.00) assessment.

(2) The assessment levied and imposed in this section shall be collected on all brand inspections completed on horses in the state of Idaho.

(3) The state brand inspector shall collect the assessment in addition to, at the same time, and in the same manner as the fee charged for state brand inspections. The assessment so collected belongs to and shall be paid to the Idaho horse board, either directly or later by remittance together with a report detailing collection of the assessment. The board shall reimburse the state brand inspector for the reasonable and necessary expenses incurred for such collection, in an amount determined by the board and the inspector. [I.C., § 25-2505, as added by 1987, ch. 214, § 1, p. 457; am. 2000, ch. 312, § 2, p. 1049.]

**Compiler's notes.** Former § 25-2505 was repealed. See Compiler's notes, § 25-2501. Section 1 of S.L. 2000, ch. 312, is compiled as § 25-2510.

**Sec. to sec. ref.** This section is referred to in §§ 25-1101, 25-1121, 25-1123, 25-2502 and 25-2505.

**25-2506. Deposit and disbursement of funds.** — Immediately upon receipt, all moneys received by the board shall be deposited in one or more separate accounts in the name of the board in one or more banks or trust companies approved under the provisions of chapter 27, title 67, Idaho Code, as state depositories. The board shall designate such banks or trust companies. All moneys so deposited are hereby appropriated to the Idaho horse board for the purpose of carrying out the provisions of this chapter.

Moneys can be withdrawn or paid out of such accounts only upon checks or other orders upon such accounts signed by two (2) officers designated by the board.



Any assessments or money that may be deposited hereunder with the treasurer of the state of Idaho shall be paid to the board, and the state treasurer shall be reimbursed for the reasonable and necessary expenses incurred.

The right is reserved to the state of Idaho to audit the funds of the board at any time. [I.C., § 25-2506, as added by 1987, ch. 214, § 1, p. 457; am. 1993, ch. 133, § 1, p. 328.]

**Compiler's notes.** Former § 25-2506 was repealed. See Compiler's notes, § 25-2501. Section 2 of S.L. 1993, ch. 133 is compiled as § 25-2510.

**25-2507. Bonding — Records — Audits.** — The person or persons who receive and disburse the moneys of the board shall be bonded by and in an amount to be determined by the board.

Accurate records of all receipts and disbursements shall be kept and audited by the legislative council, whose report shall be filed in the board office and made available upon request to any person. [I.C., § 25-2507, as added by 1987, ch. 214, § 1, p. 457; am. 1993, ch. 327, § 12, p. 1186.]

**Compiler's notes.** Former § 25-2507 was repealed. See Compiler's notes, § 25-2501.

Section 41 of S.L. 1993, ch. 327 read: "All employees employed by the Joint Senate Finance-House Appropriations Committee, the Legislative Auditor or Legislative Budget Office on June 30, 1993, shall be transferred to the Legislative Council and shall be deemed to be employees of the Legislative Council on July 1, 1993. All moneys which have been appropriated to and been encumbered by the Joint Senate Finance-House Appropriations Committee, the Legislative Budget Office and

the Legislative Auditor on June 30, 1993, shall be transferred to the Legislative Council and shall be deemed to be encumbered by that body. All moneys appropriated to the Joint Senate Finance-House Appropriations Committee for the Legislative Auditor and the Legislative Budget Office are deemed appropriated to the Legislative Council for the same period and purpose."

Sections 11 and 13 of S.L. 1993, ch. 327 are compiled as §§ 22-4010 and 25-3112, respectively.

**25-2508. Assessment liens.** — All assessments which become due and owing under the provisions of this chapter constitute a lien upon the horses inspected which shall be prior to all liens except those having a priority under state law. [I.C., § 25-2508, as added by 1987, ch. 214, § 1, p. 457.]

**Compiler's notes.** Former § 25-2508 was repealed. See Compiler's notes, § 25-2501.

**25-2509. Assessment is mandatory.** — The assessment levied by the provisions of this chapter is mandatory and failure or refusal to pay the assessment shall constitute a misdemeanor. [I.C., § 25-2509, as added by 1987, ch. 214, § 1, p. 457.]

**25-2510. Referendum for horse owners.** — (1) Within three (3) years from July 1, 2000, a referendum shall be held to determine if horse owners favor an increase from one dollar (\$1.00) to three dollars (\$3.00) in the mandatory assessment prescribed in section 25-2505, Idaho Code. The question shall be submitted to all horse owners who had a brand inspection the year prior to the referendum. Horse owners who have been issued a lifetime brand inspection after July 1, 2000, are also eligible to participate

in the referendum and may do so by requesting a ballot from the Idaho horse board. Voting shall be by secret ballots upon which the words "Do you favor the increase from one dollar (\$1.00) to three dollars (\$3.00) in the mandatory assessment to fund the Idaho Horse Board?" are printed with a square before each of the printed words "YES" and "NO" with directions to insert an "X" mark in the square before the proposition which the voter favors. If a majority of the referendum vote is in favor of the mandatory assessment of three dollars (\$3.00), the provisions of section 25-2505, Idaho Code, shall be extended indefinitely or until such time that the horse board deems it necessary to hold another referendum on the issue. If a majority of the referendum vote is against the three dollar (\$3.00) assessment provided in section 25-2505, Idaho Code, the assessment shall revert to one dollar (\$1.00) on the date the director of the department of agriculture announces the results of the referendum.

(2) After five (5) years from the effective date of the referendum required in subsection (1) of this section, and every five (5) years thereafter, a referendum on the continuation of the mandatory assessment to fund the Idaho horse board may be held at the petition of horse owners, or at the request of the Idaho horse board. The question shall be submitted to all horse owners who paid an assessment the year before the referendum and by owners who hold a lifetime brand inspection issued since July 1, 1993. The question shall be submitted by secret ballots upon which the words, "Do you favor the continuation of a mandatory assessment to fund the Idaho Horse Board?" are printed with a square before each of the printed words "YES" and "NO" with directions to insert an "X" mark in the square before the question which the voter favors. If a majority of the referendum vote is in favor of continuing the mandatory assessment, all of the provisions of chapter 25, title 25, Idaho Code, shall continue. If a majority of the referendum vote is against continuing the mandatory assessment, the assessment imposed in section 25-2505, Idaho Code, shall cease to be mandatory on the date the director of the department of agriculture announces the results of the referendum vote. The procedures necessary to initiate a referendum under this subsection are as follows:

(a) A referendum shall be held if the Idaho department of agriculture receives a petition requesting such a referendum signed by ten percent (10%) or more of horse owners who have had a brand inspection, in either of the two (2) immediate past years; or

(b) A referendum shall be held if the Idaho department of agriculture receives a written request for such referendum from the Idaho horse board.

(3) Any referendum held pursuant to subsections (1) and (2) of this section shall be conducted as follows:

(a) Any referendum must be supervised by the Idaho department of agriculture.

(b) Any referendum shall be held, and the result determined and declared by the director of the department of agriculture, and recorded in the office of the secretary of state.

(c) Notice of any referendum must be given by the Idaho horse board in a manner determined by it. The ballots must be prepared by the Idaho



horse board and forwarded to eligible owners. Returned ballots shall be delivered to the Idaho department of agriculture, main office, Boise, Idaho.

(d) The Idaho horse board shall pay the costs of any referendum. [I.C., § 25-2510, as added by 1993, ch. 133, § 2, p. 328; am. 1997, ch. 39, § 1, p. 73; am. 2000, ch. 312, § 1, p. 1049.]

**Compiler's notes.** Section 1 of S.L. 1993, ch. 133 is compiled as § 25-2506.

Section 2 of S.L. 2000, ch. 312, is compiled as § 25-2505.

Section 2 of S.L. 1997, ch. 39 declared an emergency. Approved March 12, 1997.

**Sec. to sec. ref.** This section is referred to in § 25-2505.

## CHAPTER 26

### EXTERMINATION OF WILD ANIMALS AND PESTS IN COUNTIES

#### SECTION.

- 25-2601. Control of pests — Powers of county commissioners.
- 25-2602. Levy of taxes — Appropriation — Pest fund.
- 25-2603. Manner of control of pests and payment of costs.
- 25-2604. Control districts.
- 25-2605. Purchase and sale of supplies — Rules and regulations regarding use.
- 25-2606. Right of entry.
- 25-2607. Notice to owner.

#### SECTION.

- 25-2608. Duty to control agricultural pests.
- 25-2609. Poisoned baits.
- 25-2610. Cooperation with state and federal agencies.
- 25-2611. Extension division of university.
- 25-2612. Animal damage control districts.
- 25-2612A. Duties and powers of the state animal damage control board.
- 25-2613. Short title.
- 25-2614 — 25-2629. [Amended and Redesignated.]

#### **25-2601. Control of pests — Powers of county commissioners. —**

The board of county commissioners of each and every county of this state are all hereby granted full power and authority to declare any predatory animal, including coyote, that feeds upon, preys upon or destroys any poultry or livestock of any kind upon any public or private lands within their respective counties, or any rodent, jack-rabbit, gopher, ground squirrel, cricket, locust, grasshopper and other insect pests or plant disease causing organisms/agents or any other invertebrate organism that feeds, preys upon, or destroys any livestock, natural grasses, or cultivated crops of any kind upon any public or private lands within their respective counties, to be agricultural pests, and to take all steps that they may deem necessary to control such pests. [1951, ch. 275, § 1, p. 578; am. and redesign. 1989, ch. 210, § 1, p. 514; am. 1994, ch. 80, § 1, p. 182.]

**Compiler's notes.** This section was formerly compiled as § 25-2618.

Former §§ 25-2601 — 25-2604 which comprised R.S., §§ 1760-1760c; am. 1890-1891, p. 31, § 1; reen. 1899, p. 20, § 1; am. 1912, ch.

10, § 1, p. 46; am. 1913, ch. 162, p. 531; reen. R.C. & C.L., §§ 1935-1938; C.S., §§ 3475-3478; I.C.A., §§ 24-2301 — 24-2304, were repealed by S.L. 1951, ch. 275, § 12, p. 578.

**25-2602. Levy of taxes — Appropriation — Pest fund. —** For the purpose of providing funds for the control of any agricultural pests under the provisions of this act, the board of commissioners of any county in the state may, and they are hereby empowered, at the time taxes are levied by



them for state and county purposes, to levy an annual tax, not exceeding two hundredths per cent (.02%) of market value for assessment purposes of all property within such county, for the purpose of controlling any and all pests that have been declared to be agricultural pests, as provided in section 25-2601, Idaho Code, such tax to be collected in the same manner as other county taxes are collected. Such boards of county commissioners are also further authorized and empowered, in case of an emergency, which emergency shall be declared by them, to make a direct appropriation for the purpose of controlling such pests. All moneys so raised by taxes or direct appropriation shall be placed in a county pest fund, which shall be used for no other purpose than the control of such pests and for the payment of all necessary expenses incurred in such control program. Such fund shall be a revolving fund and any moneys returned to the same under any of the provisions of this act shall continue to be available for the operation of said control program. [1951, ch. 275, § 2, p. 578; am. and redesign. 1989, ch. 210, § 2, p. 514.]

**Compiler's notes.** This section was formerly compiled as § 25-2619.

Former § 25-2602 was repealed. See Com-

piler's notes, § 25-2601.

For words "this act" see Compiler's notes, § 25-2613.

**25-2603. Manner of control of pests and payment of costs.** — The board of county commissioners of any county infested with any agricultural pests may provide for the control of any such pests in any manner they may see fit, and any expenses incurred by them in conducting any such control program, for materials, labor or supervision, shall be a proper charge against said county pest fund, to be approved and paid as other claims against the county are approved and paid. [1951, ch. 275, § 3, p. 578; am. and redesign. 1989, ch. 210, § 3, p. 514.]

**Compiler's notes.** This section was formerly compiled as § 25-2620.

Former § 25-2603 was repealed. See Compiler's notes, § 25-2601.

**25-2604. Control districts.** — The board of commissioners of any county in the state may create special control districts in the county for the control of agricultural pests infesting any such district, may levy an annual tax, not exceeding two hundredths per cent (.02%) of market value for assessment purposes of all property within such district, [and] may appoint three (3) commissioners to govern the affairs of the pest control district. The pest control district, through the authority of the board of commissioners may require the landowners or their agents in such control district to either control such agricultural pests on their own lands in such district within a specified time, or to pay the cost of controlling them if the same are controlled by agents of the district after failure of the landowner, or his agent, to perform such duty within the time limited in any notice to such owner, or agent. Cost of control services performed by employees of a pest control district shall constitute a lien against the property and any water right appurtenant thereto at the time of rendition of such service and shall be collectable as any other taxes. Charges for control services performed by a control district shall be determined by the board of county commissioners

but in no case shall charges exceed the actual cost of performing such service. Such control district may be established in any precinct in the county.

Before the same shall be established, however, it shall be necessary that a petition be filed with the clerk of the board of commissioners requesting the creation of the same, which petition shall be signed by at least twenty-five (25) qualified electors of each precinct included in the proposed control district.

The commissioners shall order a public hearing on such petition at a time and place to be fixed in such order, of which hearing notice shall be given in such manner as the commissioners may order, which time, however, shall not be less than fourteen (14) days from the giving of the said notice. After such hearing, said board may by order create such control district not less than fourteen (14) days after such hearing, fix its boundaries, provide for a control program in such district and create the necessary machinery to carry out such program unless a petition of protest has been filed with the clerk of the board of commissioners. Said petition of protest shall meet the same requirements as to the number of signers and for the same number of precincts and for the same district boundaries as petitions in favor previously filed and shall be filed with the clerk of the board of commissioners not later than fourteen (14) days following said hearing.

In the event that a petition of protest is filed, the board of commissioners shall not declare the creation of a control district but shall call an election, subject to the provisions of section 34-106, Idaho Code, for the purpose of determining whether or not a control district shall be created. The cost of conducting the election shall be paid from any county fund, the use of which for this purpose is not prohibited by statute. The election shall be conducted in each precinct within the proposed control district according to the provisions of chapter 14, title 34, Idaho Code, and shall require the employment of two (2) election judges and one (1) clerk for each precinct. A qualified elector is any individual who is qualified to vote pursuant to the requirements of section 34-104, Idaho Code. [1951, ch. 275, § 4, p. 578; am. 1971, ch. 141, § 1, p. 594; am. 1974, ch. 299, § 1, p. 1760; am. 1982, ch. 254, § 3, p. 646; am. and redesign. 1989, ch. 210, § 4, p. 514; am. 1995, ch. 118, § 14, p. 417.]

**Compiler's notes.** The bracketed word "and" in the first paragraph was inserted by the compiler.

This section was formerly compiled as § 25-2621.

Former § 25-2604 was repealed. See Compiler's notes, § 25-2601.

Sections 2 and 4 of S.L. 1982, ch. 254 are compiled as §§ 22-4301 and 27-106, respectively.

**25-2605. Purchase and sale of supplies — Rules and regulations regarding use.** — The board of county commissioners of any county is hereby authorized to purchase such supplies and equipment as may be necessary to carry out any control program adopted by them, to prepare the same for use, and sell the same at cost to the owners, occupants and lessees of lands infested by any agricultural pests, and also to adopt such rules and regulations governing the use of such supplies and equipment as may be



necessary to prevent the same from doing any damage to the livestock or property of another, whether on public or private lands. Such commissioners are also empowered to engage such person or persons as may be necessary to supervise any control program adopted by them, and control any such agricultural pests, and to pay such person or persons a reasonable compensation for their services in addition to their reasonable and actual living and traveling expenses. [1951, ch. 275, § 5, p. 578; am. and redesign. 1989, ch. 210, § 5, p. 514.]

**Compiler's notes.** This section was formerly compiled as § 25-2622.

Former §§ 25-2605 — 25-2607 which comprised S.L. 1907, p. 24, §§ 1-3; am. 1913, ch.

157, § 1, p. 526; reen. R.C. & C.L., §§ 1940-1942; C.S., §§ 3479-3481; I.C.A., §§ 24-2305 — 24-2307, were repealed by S.L. 1951, ch. 275, § 12, p. 578.

**25-2606. Right of entry.** — The board of county commissioners of any county engaging in the control of agricultural pests as defined under the provisions of this chapter may compensate for or provide supplies and authorize a person or persons employed as provided in this act, to control agricultural pests within such county; and any person or persons so authorized is hereby empowered and directed to enter upon any farm, railroad right-of-way, irrigation ditches and rights-of-way, grounds, or premises where there are agricultural pests to ascertain conditions and to control such agricultural pests thereon when the owner or occupant shall neglect or refuse to do so. [1951, ch. 275, § 6, p. 578; am. and redesign. 1989, ch. 210, § 6, p. 514.]

**Compiler's notes.** This section was formerly compiled as § 25-2623.

Former § 25-2606 was repealed. See Com-

piler's notes, § 25-2605.

For words "this act" see Compiler's notes, § 25-2613.

**25-2607. Notice to owner.** — It shall be the duty of the person or persons so authorized to give anyone on whose premises are found agricultural pests, ten (10) days' notice in writing, to control the same; or if such land is unoccupied and owned by a nonresident, such notice shall be mailed to the owner's address, or if the address is unknown, posted upon the land or premises where such agricultural pests are to be controlled; and if upon the land or right-of-way of any railroad company, such notice may be served upon its agent at the station nearest to such land or right-of-way; and if the work of controlling same is not done within such time, the person or persons so authorized by the county commissioners shall proceed to control such agricultural pests on such land or premises; provided that such person or persons shall use every precaution to prevent the destruction of domestic fowl or animals. [1951, ch. 275, § 7, p. 578; am. and redesign. 1989, ch. 210, § 7, p. 514.]

**Compiler's notes.** This section was formerly compiled as § 25-2624.

Former § 25-2607 was repealed. See Compiler's notes, § 25-2605.



**25-2608. Duty to control agricultural pests.** — It shall be the duty of every landowner in an agricultural pest control district, including federal, state, county, municipal government, or their agent, county highway district, independent highway district, public or private irrigation district or system, drainage district and railroad, on land owned or controlled by them, to control those agricultural pests declared as such by the board of county commissioners as provided in section 25-2601, Idaho Code. [I.C., § 25-2625, as added by 1974, ch. 299, § 3, p. 1760; am. and redesign. 1989, ch. 210, § 8, p. 514.]

**Compiler's notes.** This section was formerly compiled as § 25-2625.

Former §§ 25-2608, 25-2609 which comprised S.L. 1913, ch. 129, §§ 1, 2, p. 476;

compiled and reen. C.L., §§ 1942a, 1942b; C.S. §§ 3482, 3483; I.C.A., §§ 24-2308, 24-2309, were repealed by S.L. 1951, ch. 275, § 12, p. 578.

**25-2609. Poisoned baits.** — All poisons, poisoned baits prepared and distributed under authority of the board of county commissioners shall be placed in containers plainly labeled to show the character and purpose of the contents thereof. [1951, ch. 275, § 9, p. 578; am. and redesign. 1989, ch. 210, § 9, p. 514.]

**Compiler's notes.** This section was formerly compiled as § 25-2626.

Former § 25-2609 was repealed. See Compiler's notes, § 25-2608.

**25-2610. Cooperation with state and federal agencies.** — In order to secure the most effective and economical expenditure of funds used in controlling agricultural pests, the boards of county commissioners taking advantage of the provisions of this chapter shall cooperate, so far as practicable, with state and federal organizations engaged in similar work. [1951, ch. 275, § 10, p. 578; am. and redesign. 1989, ch. 210, § 10, p. 514.]

**Compiler's notes.** This section was formerly compiled as § 25-2627.

Former §§ 25-2610 — 25-2613 were comprised of S.L. 1919, ch. 22, §§ 1-5, p. 87; C.S.,

§§ 3484-3487; I.C.A., §§ 24-2310 — 24-2313, were repealed by S.L. 1951, ch. 275, § 12, p. 578.

**25-2611. Extension division of university.** — The extension division of the University of Idaho is hereby authorized to furnish supplies at cost to persons or organizations for the purpose of controlling agricultural pests. [1951, ch. 275, § 11, p. 578; am. and redesign. 1989, ch. 210, § 11, p. 514.]

**Compiler's notes.** This section was formerly compiled as § 25-2628.

Former § 25-2611 was repealed. See Compiler's notes, § 25-2610.

**25-2612. Animal damage control districts.** — (1) There are hereby established five (5) animal damage control districts in the state of Idaho.

(a) Animal damage control district number 1 shall consist of the counties of Benewah, Bonner, Boundary, Clearwater, Idaho, Kootenai, Latah, Lewis, Nez Perce and Shoshone.

(b) Animal damage control district number 2 shall consist of the counties of Ada, Adams, Boise, Canyon, Elmore, Gem, Owyhee, Payette, Valley and Washington.

(c) Animal damage control district number 3 shall consist of the counties of Blaine, Camas, Cassia, Gooding, Jerome, Lincoln, Minidoka and Twin Falls.

(d) Animal damage control district number 4 shall consist of the counties of Bannock, Bear Lake, Bingham, Caribou, Franklin, Oneida and Power.

(e) Animal damage control district number 5 shall consist of the counties of Bonneville, Butte, Clark, Custer, Fremont, Jefferson, Lemhi, Madison and Teton.

(2) A board of directors for each animal damage control district is hereby created. The board of directors of an animal damage control district shall consist of one (1) director appointed by the board of county commissioners from each of the participating counties within the district. Nomination for directors shall be made to the county commissioners by livestock and agriculturally oriented groups which have a vested and economic interest in the animal damage control program, and appointees must have a substantial vested and economic interest in the livestock or other agricultural industry. The length of term shall be two (2) years. A director shall receive such compensation as may be fixed by order of the district animal damage control board, and shall be entitled to expense reimbursement in the same manner as a county employee; compensation and expense reimbursement shall be made from the moneys available to the district animal damage control board.

(3) The board of directors shall meet at least annually. Such meeting shall be called at the direction of the chairman of the board or by a majority of the directors in that district. At said annual meeting, the board of directors shall organize by electing from amongst its members a chairman, a vice chairman, and such other officers as may be necessary. They shall also establish operating rules for the board and approve annual work plans for the animal damage control programs. After the annual meeting, the board of directors shall meet at such times and places as are required by the board's rules.

(4) The board of directors shall have authority to receive and disperse funds from any source for the purpose of controlling predatory animal and other vertebrate pest damage in the district. Any moneys received by the board shall be maintained on deposit in a bank or trust company designated as a state depository, and may be dispersed from such account only over the signature of at least two (2) members of the board.

(5) All contracts and agreements between the board of directors and any agency, unit of government, association, organization or private party shall be reduced to writing, and shall be maintained as a part of the official records of the board. [I.C., § 25-2629, as added by 1985, ch. 63, § 12, p. 125; am. and redesign. 1989, ch. 210, § 12, p. 514.]

**Compiler's notes.** This section was formerly compiled as § 25-2629.

Former § 25-2612 was repealed. See Com-

pilers' notes, § 25-2610.

Section 11 of S.L. 1985, ch. 63 is compiled as § 25-204.



**25-2612A. Duties and powers of the state animal damage control board.** — (1) There is hereby created a state animal damage control board. The chairman of the board of sheep commissioners shall be a voting member and serve as the chairman of the state animal damage control board which shall have such duties and powers relating to the prevention and control of damage caused by predatory animals and other vertebrate pests, including threatened or endangered wildlife, within the state of Idaho as are established by federal or state law, federal or state rule or regulation, or county ordinance. It is hereby made the duty of the state animal damage control board to coordinate and give general direction to programs to prevent and control damage or conflicts on federal, state, or other public or private lands caused by predatory animals, rodents, or birds injurious to animal husbandry, agriculture, horticulture, forestry, wildlife and human health or safety; and also to facilitate, coordinate or conduct such investigations, experiments or tests as deemed necessary to determine, demonstrate and promulgate the best methods of predatory animals and other vertebrate pest control. In carrying out these duties, the board may cooperate with federal, state, county, city and private agencies, organizations or individuals; provided, however, that the authority of this board is not to supersede the state fish and game department or the responsible federal agency in the utilization of the funds of those two (2) agencies in their conduct of similar work within the state of Idaho, but the board shall cooperate and work with these two (2) agencies. Prevention and control of predatory animals and other vertebrate pests does not include the payment of compensation for damages.

(2) In addition to the chairman, the state animal damage control board shall consist of a member appointed by the president of the Idaho cattle association, the director of the state department of agriculture, the director of the state department of fish and game, and the chairman of the board of directors of each of the five (5) animal damage control districts.

(3) The state animal damage control board shall have as its primary duties the coordination of the control efforts of the five (5) animal damage control districts; the establishment of general policies for the control programs; the establishment of annual priorities for control efforts; and the assignment or distribution of moneys made available to the board from any source. All contracts or agreements for providing prevention and control services which involve an expenditure of moneys from the state animal damage control board shall be in writing and shall be maintained as a part of the official records of the board.

(4) The state board of sheep commissioners shall provide staff, administrative and fiscal services for the animal damage control board. [1951, ch. 250, § 2, p. 527; am. 1971, ch. 136, § 12, p. 522; am. 1974, ch. 18, § 98, p. 364; am. 1985, ch. 63, § 3, p. 125; am. 1986, ch. 212, § 1, p. 546; am. and redesisg. 1997, ch. 116, § 2, p. 289; am. and redesisg. 1998, ch. 205, § 3, p. 726.]

**Compiler's notes.** The amendment and redesignation of this section by S.L. 1998, ch. 205, § 3, became effective September 23, 1998, upon referendum approval of the provi-



sions of the act by wool growers. For further details about this referendum, see the text of § 25-160.

This section was formerly compiled as § 25-128A and amended and redesignated as § 25-2612A by S.L. 1998, ch. 205, § 3.

**25-2613. Short title.** — This act shall be known and may be cited as the “Control of Wild Animals and Pests in Counties Act.” [I.C., § 25-2613, as added by 1989, ch. 210, § 13, p. 514.]

**Compiler’s notes.** Former § 25-2613 was repealed. See Compiler’s notes, § 25-2610. The words “This act” refer to S.L. 1989, ch.

210, which is compiled as §§ 25-2601 — 25-2613.

**25-2614 — 25-2617. Costs charged as taxes — Poisoned baits — Cooperation with state and federal agencies — Extension division of university to furnish poisons.** [Repealed.]

**Compiler’s notes.** These sections, which comprised S.L. 1919, ch. 22, §§ 5-7, 10; C.S., §§ 3488 — 3491; am. 1927, ch. 75, § 1, p. 94;

I.C.A., §§ 24-2314 — 24-2317 were repealed by S.L. 1951, ch. 275, § 12, p. 578.

**25-2618 — 25-2625. [Amended and Redesignated.]**

**Compiler’s notes.** Former §§ 25-2618 — 25-2625 were amended and redesignated as

§§ 25-2601 — 25-2608 by §§ 1—8 of S.L. 1989, ch. 210.

**25-2626. [Amended and Redesignated.]**

**Compiler’s notes.** Former § 25-2626 was amended and redesignated as § 25-2609 by § 9 of S.L. 1989, ch. 210.

**25-2627, 25-2628. [Amended and Redesignated.]**

**Compiler’s notes.** Former §§ 25-2627, 25-2628 were amended and redesignated as

§§ 25-2610, 25-2611 by §§ 10 and 11 of S.L. 1989, ch. 210.

**25-2629. [Amended and Redesignated.]**

**Compiler’s notes.** Former § 25-2629 was amended and redesignated as § 25-2612 by § 12 of S.L. 1989, ch. 210.

## CHAPTER 27

### COMMERCIAL FEEDING STUFFS

#### SECTION.

25-2701 — 25-2714. [Repealed.]  
25-2715. Title.  
25-2716. Enforcing official.  
25-2717. Definitions of words and terms.  
25-2718. Registration.  
25-2719. Labeling.  
25-2720. Inspection fees.  
25-2721. Adulteration.

#### SECTION.

25-2722. Misbranding.  
25-2723. Inspection, sampling, analysis.  
25-2724. Regulations, standards, definitions.  
25-2725. Detained commercial feeds.  
25-2726. Penalties for violations.  
25-2727. Publications.  
25-2728. Cooperation with other entities.

**25-2701 — 25-2714. Certifying label, statements — Enforcement and penalties — Analysis of samples by chemist — Fees. [Repealed.]**

**Compiler's notes.** These sections were repealed by S.L. 1953, ch. 243, § 15, p. 366:

Sections 25-2701 — 25-2711 were comprised of S.L. 1929, ch. 276, §§ 1-11, p. 637; I.C.A., §§ 24-2501 — 24-2511; am. 1947, ch. 76, §§ 3-6, p. 121.

Section 25-2712 was comprised of I.C.A., § 24-12 as added by 1941, ch. 96, § 1, p. 175; am. 1947, ch. 76, § 7, p. 121.

Sections 25-2713 and 25-2714 were comprised of I.C.A., §§ 24-2513, 24-2514 as added by 1947, ch. 76, §§ 8, 9, p. 121.

**25-2715. Title.** — This act shall be known as the "Idaho Commercial Feed Law." [1953, ch. 243, § 1, p. 366.]

**Compiler's notes.** The words "this act" refer to S.L. 1953, ch. 243 which is compiled herein as §§ 25-2715 — 25-2727.

**25-2716. Enforcing official.** — This act shall be administered by the director of the department of agriculture of the state of Idaho, hereinafter referred to as the "director." [1953, ch. 243, § 2, p. 366; am. 1974, ch. 18, § 160, p. 364.]

**Compiler's notes.** For words "this act" see Compiler's notes, § 25-2715.

Section 159 of S.L. 1974, ch. 18 is compiled as § 25-1737.

**25-2717. Definitions of words and terms.** — When used in this chapter:

a. The term "brand name" means any word, name, symbol or device, or any combination thereof, identifying the commercial feed of a distributor or registrant and distinguishing it from that of others.

b. The term "commercial feed" means all materials or combination of materials which are distributed or intended for distribution for use as feed, or for mixing in feed for poultry and animals other than man except:

1. Unmixed whole seeds and physically altered entire unmixed seeds, when such whole or physically altered seeds are not chemically changed or are not adulterated within the meaning of section 25-2721, Idaho Code.
2. Seeds mixed and planted as such mixture, grown and harvested as one (1) crop and processed as one (1) mixture.
3. All hay except commercially dehydrated legumes and grasses.
4. Whole or ground straw, stover, silage, cobs, husks, hulls, wet beet pulp, pea screenings and beet discard molasses when not mixed with other materials.

The director, by rule, may exempt from this definition, or from specific provisions of this chapter, commodities, and individual chemical compounds or substances when such commodities, compounds or substances are not intermixed with other materials, and are not adulterated according to the provisions of section 25-2721, Idaho Code.

c. The term "contract feeder" means a person who as an independent contractor, feeds commercial feed to animals pursuant to a contract whereby such commercial feed is supplied, furnished, or otherwise provided to such

person and whereby such person's remuneration is determined, all or in part, by feed consumption, mortality, profits, or amount or quality of product.

d. The term "customer-formula feed" means commercial feed which consists of a mixture of commercial feeds and/or feed ingredients each batch of which is manufactured according to the specific instructions of the final purchaser.

e. The term "department" means the Idaho department of agriculture.

f. The term "director" means the director of the Idaho department of agriculture or the director's authorized agent.

g. The term "distribute" means to offer for sale, sell, barter, or otherwise supply commercial feeds or to supply, furnish, or otherwise provide commercial feed to a contract feeder.

h. The term "distributor" means any person who distributes.

i. The term "drug" means any article intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in animals other than man and articles other than feed intended to affect the structure or any function of the animal body.

j. The term "feed ingredient" means each of the constituent materials making up a commercial feed.

k. The term "label" means a display of written, printed, or graphic matter upon or affixed to the container in which a commercial feed is distributed, or on the invoice or delivery slip with which a commercial feed is distributed.

l. The term "labeling" means all labels and other written, printed, or graphic matter upon a commercial feed or any of its containers or wrapper, or accompanying such commercial feed.

m. The term "manufacture" means to grind, mix or blend, or further process a commercial feed for distribution.

n. The term "mineral feed" means a commercial feed intended to supply primarily mineral elements or inorganic nutrients.

o. The term "official sample" means a sample of commercial feed taken by the director or an authorized agent in accordance with the provisions of section 25-2723, Idaho Code.

p. The term "percent" or "percentage" means percentage by weight.

q. The term "person" includes individual, partnership, corporation, firm, association, and agent.

r. The term "pet" means any domesticated animal normally maintained in or near the household(s) of the owner(s) thereof.

s. The term "pet food" means any commercial feed prepared and distributed for consumption by dogs and cats.

t. The term "product name" means the name of the commercial feed which identifies it as to kind, class, or specific use.

u. The term "purchase" includes taking by sale, discount, negotiation, mortgage, pledge, lien, issue or reissue, gift or any other voluntary transaction creating an interest in property.

v. The term "purchaser" means a person who takes by purchase.

w. The term "registrant" means that person, manufacturer, guarantor, or distributor who registers a product or products according to the provisions of section 25-2718, Idaho Code.



x. The term "sell" or "sale" includes exchange.

y. The term "specialty pet" means any domesticated animal pet normally maintained in a cage or tank, such as, but not limited to, gerbils, hamsters, canaries, psittacine birds, mynahs, finches, tropical fish, goldfish, snakes and turtles.

z. The term "specialty pet food" means any commercial feed prepared and distributed for consumption by specialty pets.

aa. The term "ton" means a net weight of two thousand (2,000) pounds avoirdupois.

bb. Words importing the singular number may extend and be applied to several persons or things and words importing the plural may include the singular. [1953, ch. 243, § 3, p. 366; am. 1957, ch. 100, § 1, p. 174; am. 1971, ch. 343, § 1, p. 1335; am. 1976, ch. 61, § 1, p. 209; am. 1987, ch. 129, § 1, p. 260; am. 1993, ch. 12, § 1, p. 38.]

**Compiler's notes.** For words "this act" see Compiler's notes, § 25-2715.

**Sec. to sec. ref.** This section is referred to in § 25-2723.

**25-2718. Registration.** — a. Each type of commercial feed except customer-formula feed shall be registered by the person who manufactures or distributes feed within the state of Idaho before being offered for sale, sold, or otherwise distributed in this state. The application for registration shall be submitted to the director on forms furnished by the department of agriculture, and shall be accompanied by a fee of five dollars (\$5.00), except that those feeds sold in packages of ten (10) pounds or less shall be registered for a fee of twenty-five dollars (\$25.00), and shall also be accompanied by a label describing the product, unless such label has not been altered since the last registration of the product. A label shall continue in effect unless it is canceled or changed by the registrant or unless canceled by the department of agriculture pursuant to subsection d of this section. All fees paid to the department of agriculture provided for in this section shall be paid to the state treasury, and placed in the commercial feed and fertilizer fund. Upon approval by the director a copy of the registration shall be furnished to the applicant. All registrations expire on September 30 of each year.

b. A distributor shall not be required to register any brand of commercial feed which is already registered under the provisions of this chapter by another person.

c. Changes in the guarantee of either chemical or ingredient composition of a commercial feed may be permitted provided satisfactory evidence is submitted showing that such changes would not result in a lowering of the feeding value of the product for the purpose for which designed.

d. The director is empowered to refuse registration of any application not in compliance with all provisions of this chapter and to cancel any registration when it is subsequently found to be in violation of any provision of this chapter or when the director has satisfactory evidence that the registrant has used fraudulent or deceptive practices in attempted evasion of the provisions of this chapter or regulations thereunder.

Provided, however, that no registration shall be refused or canceled until the registrant shall have been given opportunity to be heard before the director. [1953, ch. 243, § 4, p. 366; am. 1955, ch. 251, § 1, p. 559; am. 1971, ch. 343, § 2, p. 1335; am. 1974, ch. 50, § 1, p. 1103; am. 1993, ch. 12, § 2, p. 38.]

**Compiler's notes.** This section was amended twice in 1974 by § 161 of ch. 18 approved February 21, 1974 and § 1 of ch. 50 approved March 11, 1974. Since § 1 of ch. 50 was the last expression of the legislature it was set out as the section. Section 161 of ch. 18 changed "commissioner" to "director." This change has been made in the above section on the authority of S.L. 1974, ch. 286, § 1 and ch. 18, § 1 (§ 22-101).

For words "this act" see Compiler's notes, § 25-2715.

Section 2 of S.L. 1974, ch. 50 is compiled as § 25-2720.

Section 2 of S.L. 1955, ch. 251 declared an emergency. Approved March 16, 1955.

**Sec. to sec. ref.** This section is referred to in § 25-2720.

**25-2719. Labeling.** — A commercial feed shall be labeled as follows:

a. A commercial feed, except a customer-formula feed, offered for sale or sold or otherwise distributed in this state in bags, barrels, or other containers shall have placed on or affixed to the container in written or printed form, a label bearing the following information:

1. The net weight (may be stated parenthetically in metric units in addition to the required avoirdupois).
2. The product name and the brand name, if any, under which the commercial feed is distributed.
3. The guaranteed analysis stated in such terms as the director, by regulation, determines is required to advise the user of the composition of the feed or to support claims made in the labeling. In all cases the substances or elements must be determinable by laboratory methods, such as the methods published by the association of official analytical chemists.
4. The common or usual name of each ingredient used in the manufacture of the commercial feed: provided that the director, by regulation, may permit the use of a collective term for a group of ingredients which perform a similar function, or the director may exempt such commercial feeds, or any group thereof, from this requirement of an ingredient statement if the director finds that such statement is not required in the interest of consumers.
5. The name and principal mailing address of the manufacturer or the person responsible for distributing the commercial feed.
6. Adequate directions for use for all commercial feeds containing drugs and for such other feeds as the director may require, by regulation, as necessary for their safe and effective use.
7. Such precautionary statements as the director, by regulation, determines are necessary for the safe and effective use of the commercial feed.

b. A customer-formula feed shall be accompanied by a label invoice, delivery slip, or other shipping document bearing the following information:

1. Name and address of the manufacturer.
2. Name and address of the purchaser.



3. Date of delivery.
4. The product name and net weight (may be stated parenthetically in metric units in addition to the required avoirdupois) of each commercial feed and the guaranteed analysis, listing the minimum percentage of crude protein, minimum percentage of crude fat, and the maximum percentage of crude fiber.
5. Adequate directions for use for all customer-formula feeds containing drugs and for such other feeds as the director may require, by regulation, as necessary for their safe and effective use.
6. The directions for use and precautionary statements as required by regulation.
7. If a drug-containing product is used:
  - i. The purpose of the medication (claim statement).
  - ii. The established name of each active drug ingredient and the level of each drug used in the final mixture expressed in accordance with regulation. [1953, ch. 243, § 5, p. 366; am. 1993, ch. 12, § 3, p. 38.]

**Compiler's notes.** The words in parentheses so appeared in the law as enacted.

**Sec. to sec. ref.** This section is referred to in § 25-2722.

**Collateral References.** 55 Am. Jur. 2d, Monopolies, Restraints of Trade, and Unfair Trade Practices, § 1293.

**25-2720. Inspection fees.** — a. There shall be paid to the department of agriculture for all commercial feeds distributed in this state, an inspection fee at the rate of not more than twenty cents (20¢) per ton, by the registrant except that a person other than the registrant may assume liability for the inspection fee. Fees so collected shall be paid into the state treasury and placed in the "Commercial Feed and Fertilizer Fund" and shall be used to pay the costs of inspection, sampling, analysis, and other expenses necessary for the administration of this chapter. Payment of inspection fees is subject to the following:

1. No fee shall be paid on a commercial feed if the payment has been made by a previous distributor.
  2. No fee shall be paid on customer-formula feeds if the inspection fee is paid on the commercial feeds which are used as ingredients therein.
  3. No fee shall be paid on commercial feeds which are used as ingredients for the manufacture of commercial feeds which are registered. If the fee has already been paid, credit shall be given for such payment.
  4. Sales of commercial feeds to manufacturers or exchanges between them are hereby exempted if the commercial feeds so sold or exchanged are used solely in the manufacture of feeds which are registered.
  5. In the case of a commercial feed which is distributed in the state in packages of ten (10) pounds or less, an annual registration fee of twenty-five dollars (\$25.00) per product shall be paid in lieu of an inspection fee.
  6. The minimum inspection fee shall be five dollars (\$5.00) per quarter.
- b. Payment of the inspection fee shall be evidenced by a statement made under oath in due form of law, of commercial feed distributed together with documents showing that fees corresponding to the tonnage were received by



the director. Every person required to register in accordance with section 25-2718, Idaho Code, shall:

1. File, not later than the last day of January, April, July, October of each year, a quarterly statement under oath, setting forth the number of net tons of commercial feeds distributed in this state during the preceding three (3) month period; and upon filing such statement shall pay the inspection fee at the rate stated in paragraph a of this section.

2. Keep such records as may be necessary or required by the director to indicate accurately the tonnage of commercial feed distributed in this state and the director shall have the right to examine such records to verify statements of tonnage.

3. Inspection fees which are due and owing and have not been remitted to the department within thirty (30) days following the due date shall have a late collection fee of ten percent (10%), but not less than twenty-five dollars (\$25.00), added to the amount due when payment is finally made. The assessment of this late collection fee shall not prevent the director from taking any other action as provided for in this chapter.

Failure to make an accurate statement of tonnage or to pay the inspection fee or comply as provided herein shall constitute sufficient cause for the cancellation of all registrations on file for the distributor. [1953, ch. 243, § 6, p. 366; am. 1955, ch. 240, § 1, p. 538; am. 1974, ch. 18, § 162, p. 364; am. 1974, ch. 50, § 2, p. 1103; am. 1981, ch. 298, § 1, p. 618; am. 1993, ch. 12, § 4, p. 38; am. 1994, ch. 30, § 1, p. 47.]

**Compiler's notes.** For words "this act" see Compiler's notes, § 25-2715.

Sections 161 and 163 of S.L. 1974, ch. 18 are compiled as §§ 25-2718 and 25-2723 and

section 1 of S.L. 1974, ch. 50 is compiled as § 25-2718.

Section 2 of S.L. 1955, ch. 240 declared an emergency. Approved March 15, 1955.

**25-2721. Adulteration.** — No person shall distribute an adulterated commercial feed. A commercial feed shall be deemed to be adulterated:

a. If it bears or contains any poisonous or deleterious substance which may render it injurious to health, but in case the substance is not an added substance, such commercial feed shall not be considered adulterated under the provisions of this subsection if the quantity of such substance in such commercial feed does not ordinarily render it injurious to health.

b. If it bears or contains any added poisonous, added deleterious, or added nonnutritive substance which is unsafe within the meaning of section 406 of the federal food, drug, and cosmetic act, as amended, and regulations adopted thereunder other than one which is:

1. A pesticide chemical in or on a raw agricultural commodity; or
2. A food additive.

c. If it is, or it bears or contains any food additive which is unsafe within the meaning of section 409 of the federal food, drug, and cosmetic act, as amended, and regulations adopted thereunder.

d. If it is a raw agricultural commodity and it bears or contains a pesticide chemical which is unsafe within the meaning of section 408 (a) of the federal food, drug and cosmetic act, as amended, and regulations adopted thereunder; provided that where a pesticide chemical has been used

in or on a raw agricultural commodity in conformity with an exemption granted or a tolerance prescribed under section 408 of the federal food, drug, and cosmetic act, as amended, and regulations adopted thereunder, and such raw agricultural commodity has been subjected to processing such as canning, cooking, freezing, dehydrating, or milling, the residue of such pesticide chemical remaining in or on such processed feed shall not be deemed unsafe if such residue in or on the raw agricultural commodity has been removed to the extent possible in good manufacturing practice and the concentration of such residue in the processed feed is not greater than the tolerance prescribed for the raw agricultural commodity unless the feeding of such processed feed will result or is likely to result in a pesticide residue in the edible product of the animal, which is unsafe within the meaning of section 408 (a) of the federal food, drug, and cosmetic act, as amended, and regulations adopted thereunder.

e. If it is, or it bears or contains any color additive which is unsafe within the meaning of section 706 of the federal food, drug and cosmetic act, as amended, and regulations adopted thereunder.

f. If it is, or it bears or contains any new animal drug which is unsafe within the meaning of section 512 of the federal food, drug and cosmetic act, as amended, and regulations adopted thereunder.

g. If any valuable constituent has been in whole or part omitted or abstracted therefrom or any less valuable substance substituted therefor.

h. If its composition or quality falls below or differs from that which it is purported or is represented to possess by its labeling.

i. If it contains added hulls, screenings, straw, cobs, or other high fiber material unless the name of each such material is clearly and prominently stated on the label.

j. If it contains a drug and the methods used in or the facilities or controls used for its manufacture, processing or packaging do not conform to current good manufacturing practice regulations promulgated by the director to assure that the drug meets the requirements of this chapter as to safety. In promulgating such regulations, the director shall adopt the current good manufacturing practice regulations for type A medicated articles and type B and type C medicated feeds established under authority of the federal food, drug, and cosmetic act, unless the director determines that they are not appropriate to the conditions which exist in this state.

k. If it contains viable weed seeds in amounts exceeding the limits which the director shall establish by rule or regulation. [1953, ch. 243, § 7, p. 366; am. 1993, ch. 12, § 5, p. 38.]

**Compiler's notes.** Sections 408, 409, 512, and 706 of the Federal Food, Drug, and Cosmetic Act, referred to in subdivisions c., d., e., and f., are compiled as 21 U.S.C. §§ 346a,

348, 360b, and 376, respectively.

**Sec. to sec. ref.** This section is referred to in § 25-2717.

**25-2722. Misbranding.** — No person shall distribute misbranded feed. A commercial feed shall be deemed to be misbranded:

- a. If its labeling is false or misleading in any particular.
- b. If it is distributed under the name of another feed.



c. If its container is not labeled as required in section 25-2719, Idaho Code, and in regulations prescribed under this chapter.

d. If it purports to be, or is represented as, a commercial feed, or if it purports to contain or is represented as containing a commercial feed ingredient, unless such commercial feed or feed ingredient conforms to the definition, if any, prescribed by regulation by the director.

e. If any word, statement, or other information required by or under authority of this chapter to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs or devices, in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

f. If it purports to be or is represented for special dietary uses, unless its label bears such information concerning its vitamin, mineral, and other dietary properties as the commissioner determines to be, and by regulations prescribes as necessary in order fully to inform purchasers as to its value for such uses. [1953, ch. 243, § 8, p. 366; am. 1993, ch. 12, § 6, p. 38.]

**Compiler's notes.** For words "this act" see  
Compiler's notes, § 25-2715.

The words enclosed in parentheses so appeared in the law as enacted.

**25-2723. Inspection, sampling, analysis.** — a. For the purpose of enforcement of this chapter, and in order to determine whether its provisions have been complied with, including whether or not any operations may be subject to such provisions, officers or employees duly designated by the director upon presenting appropriate credentials, to the owner, operator, or agent in charge, are authorized:

(1)[1.] To enter, during normal business hours, any factory, warehouse, or establishment within the state in which commercial feeds are manufactured, processed, packed, or held for distribution, or to enter any vehicle being used to transport or hold such feeds, and

(2)[2.] To inspect, at reasonable times and within reasonable limits and in a reasonable manner, such factory, warehouse, establishment or vehicle and all pertinent equipment, finished and unfinished materials, containers, and labeling therein.

The inspection may include the verification of only such records, and production and control procedures as may be necessary to determine compliance with the good manufacturing practice regulations established under the provisions of this chapter. Each inspection shall be commenced and completed with reasonable promptness. Upon completion of the inspection, the person in charge of the facility or vehicle shall be so notified.

b. Sampling and analysis shall be conducted in accordance with methods published by the association of official analytical chemists, or in accordance with other generally recognized methods.

c. The director, in determining for administrative purposes whether a commercial feed is deficient in any component, shall be guided by the official sample as defined in paragraph (o) of section 25-2717, Idaho Code, and obtained and analyzed as provided for in section 25-2723, Idaho Code.



d. If the owner of any factory, warehouse, or establishment described in subsection a of this section, or authorized agent, refuses to admit the director or an authorized agent to inspect in accordance with subsections a and e of this section, the director is authorized to obtain from any state court of competent jurisdiction a warrant directing such owner or agent to submit the premises described in such warrant to inspection.

e. For the enforcement of this chapter, the director or a duly authorized agent is authorized to enter upon any public or private premises including any vehicle of transport during regular business hours to have access to, and to obtain samples, and to examine records relating to distribution of commercial feeds.

f. The results of all analyses of official samples shall be forwarded by the director to the registrant and to the purchaser. When the inspection and analysis of an official sample indicate a commercial feed has been adulterated or misbranded and upon request by the registrant or purchaser within thirty (30) days following the receipt of the analysis the director shall furnish to the registrant a portion of the sample concerned. [1953, ch. 243, § 9, p. 366; am. 1974, ch. 18, § 163, p. 364; am. 1993, ch. 12, § 7, p. 38.]

**Compiler's notes.** The bracketed designations "1." and "2." were inserted by the compiler.

Section 162 of S.L. 1974, ch. 18 is compiled as § 25-2720.

Section 8 of S.L. 1993, ch. 12 is compiled as § 25-2725.

**Sec. to sec. ref.** This section is referred to in § 25-2717.

**25-2724. Regulations, standards, definitions.** — The director is hereby charged with the enforcement of this act, and after due publicity and due public hearing is empowered to promulgate and adopt such reasonable rules and regulations as may be necessary to carry into effect the full intent and meaning of this act. The director is hereby empowered to adopt regulations establishing definitions for commercial feeds and such other regulations as may be necessary for the enforcement of any provision of this act. [1953, ch. 243, § 10, p. 366; am. 1974, ch. 18, § 164, p. 364.]

**Compiler's notes.** For words "this act" see Compiler's notes, § 25-2715.

**25-2725. Detained commercial feeds.** — a. "Withdrawal from sale or distribution" order. When the director or an authorized agent has reasonable cause to believe a commercial feed is being distributed in violation of any of the provisions of this chapter or of any of the prescribed regulations under this chapter, the director may issue and enforce a written or printed "withdrawal from sale or distribution" order warning the distributor not to dispose of the feed in any manner until written permission is given by the director or the court. The director shall release the commercial feed so withdrawn when the provisions and regulations have been complied with and all costs and expenses incurred in the withdrawal have been paid. If compliance is not obtained within thirty (30) days, the director shall begin proceedings for condemnation.

b. **Condemnation and confiscation.** Any lot of commercial feed not in compliance with the provisions of this chapter shall be subject to seizure on complaint of the director to a court of competent jurisdiction in the area in which said commercial feed is located. In the event the court finds the said commercial feed to be in violation of the provisions of this chapter and orders the condemnation of said commercial feed, it shall be disposed of in any manner consistent with the quality of the commercial feed and the laws of the state: provided, that in no instance shall the disposition of said commercial feed be ordered by the court without first giving the claimant an opportunity to apply to the court for release of said commercial feed or for permission to process or relabel said commercial feed to bring it into compliance with the provisions of this chapter. [1953, ch. 243, § 11, p. 366; am. 1974, ch. 18, § 165, p. 364; am. 1993, ch. 12, § 8, p. 38.]

**Compiler's notes.** Section 7 of S.L. 1993, ch. 12 is compiled as § 25-2723.

**25-2726. Penalties for violations.** — a. Any person convicted of violating any of the provisions of this chapter or the rules and regulations issued thereunder or who shall impede, obstruct, hinder, or otherwise prevent or attempt to prevent said director or a duly authorized agent in performance of their duty in connection with the provisions of this chapter, shall be adjudged guilty of a misdemeanor and shall be fined not more than five hundred dollars (\$500) for the first violation, and not more than one thousand five hundred dollars (\$1,500) for a subsequent violation. In all prosecutions under the provisions of this chapter involving the composition of a lot of commercial feed, a certified copy of the official analysis signed by the director shall be accepted as prima facie evidence of the composition.

b. Any person who violates or fails to comply with any of the provisions of this chapter or any regulations promulgated under this chapter may be assessed a civil penalty by the department or its duly authorized agent of not more than five hundred dollars (\$500) for each offense and shall be liable for reasonable attorney fees. Assessment of a civil penalty may be made in conjunction with any other department administrative action. No civil penalty may be assessed unless the person charged was given notice and opportunity for a hearing pursuant to the Idaho administrative procedure act. If the director is unable to collect such penalty or if any person fails to pay all or a set portion of the civil penalty as determined by the department, it may recover such amount by action in the appropriate district court. Any person against whom the director has assessed a civil penalty under the provisions of this section may, within thirty (30) days of the final action by the agency making the assessment, appeal the assessment to the district court of the county in which the violation is alleged by the department to have occurred. Moneys collected for violation of a rule or regulation shall be remitted to the feed and fertilizer account.

c. Nothing in this chapter shall be construed as requiring the director or a duly authorized representative to report for prosecution or for the institution of seizure proceedings as a result of minor violations of the act



when the director believes that the public interest will be best served by a suitable notice of warning in writing.

d. It shall be the duty of each prosecuting attorney to whom any violation is reported to cause appropriate proceedings to be instituted and prosecuted in a court of competent jurisdiction without delay. Before the director reports a violation for such prosecution, an opportunity shall be given the distributor to present his view to the director.

e. The director is hereby authorized to apply for and the court to grant a temporary or permanent injunction restraining any person from violating or continuing to violate any of the provisions of this chapter or any rules or regulation promulgated under the chapter notwithstanding the existence of other remedies at law. Said injunction to be issued without bond. [1953, ch. 243, § 12, p. 366; am. 1974, ch. 18, § 166, p. 364; am. 1993, ch. 12, § 9, p. 38.]

**Compiler's notes.** Section 10 of S.L. 1993, ch. 12 is compiled as § 25-2728.

**25-2727. Publications.** — The director shall publish at least annually, in such forms as he may deem proper, information concerning the sales of commercial feeds, together with such data on their production and use as he may consider advisable, and a report of the results of the analyses of official samples of commercial feeds sold within the state as compared with the analyses guaranteed in the registration and on the label; provided, however, that the information concerning production and use of commercial feeds shall not disclose the operations of any person and the information shall be subject to disclosure according to chapter 3, title 9, Idaho Code. [1953, ch. 243, § 13, p. 336; am. 1974, ch. 18, § 167, p. 364; am. 1990, ch. 213, § 20, p. 480.]

**Compiler's notes.** Sections 19 and 21 of S.L. 1990, ch. 213 are compiled as §§ 23-515 and 26-1111, respectively.

Section 111 of S.L. 1990, ch. 213 as amended by § 16 of S.L. 1991, ch. 329 read, "Sections 1, 2, 46 and 47 of this act shall be in full force and effect on and after July 1, 1990. All other sections of this act shall be in full force and effect on and after July 1, 1993."

Section 168 of S.L. 1974, ch. 18 is compiled as § 25-3002.

Section 15, of S.L. 1953, ch. 243 repealed ch. 27, tit. 25, Idaho Code and any other laws or parts of laws in conflict with the provisions of the act.

Section 14 of S.L. 1953, ch. 243 read: "If any

clause, sentence, paragraph, or part of this act shall for any reason be judged invalid by any court of competent jurisdiction, such judgment shall not affect, impair, or invalidate the remainder thereof but shall be confined in its operation to the clause, sentence, paragraph, or part thereof directly involved in the controversy in which such judgment shall have been rendered."

Section 16 of S.L. 1953, ch. 243 provided the act should take effect and be in force from and after the first day of April, 1953.

Section 263 of S.L. 1974, ch. 18, provided that the act should take effect on and after July 1, 1973.

**25-2728. Cooperation with other entities.** — The director may cooperate with and enter into agreements with governmental agencies of this state, other states, agencies of the federal government, private associations, and commercial feed manufacturers in order to carry out the purpose and provisions of this chapter. [I.C., § 25-2728, as added by 1993, ch. 12, § 10, p. 38.]



**Compiler's notes.** Section 9 of S.L. 1993, ch. 12 is compiled as § 25-2726.

## CHAPTER 28

### DOGS

#### SECTION.

25-2801. County dog license tax.  
25-2802. License tags — Proceeds of tax.  
25-2803. Dogs at large — Collar and tag required.  
25-2804. Taking up dogs without collar and tag.

#### SECTION.

25-2805. Dogs running at large — Vicious dogs — Penalty.  
25-2806. Liability for livestock and poultry killed by dogs.  
25-2807. Dogs as property — Proof of value.  
25-2808. Dogs used in law enforcement.

**25-2801. County dog license tax.** — The board of county commissioners of any county, at any meeting in any year, may make an order requiring all owners of dogs over an age which is to be set at the discretion of the board, within certain areas to be designated by the board as requiring dog control and lying outside the corporate limits of municipalities which have enacted and are enforcing a dog license law, to pay an annual license tax set by the board of county commissioners in each county, the said tax to be paid not later than sixty (60) days from date of said meeting at which the order is enacted; provided, that where an owner keeps dogs for breeding or commercial purposes, he shall be entitled to a kennel license covering fifteen (15) dogs which fee will also be set by the board of county commissioners in each county. Said order shall be in force and effect for one (1) year from its date and thereafter until rescinded by order of the board; and notice of such order shall be published in some newspaper of general circulation within the county in the two (2) successive issues of said paper immediately following the meeting at which such action is taken by the board of county commissioners. [1927, ch. 20, § 1, p. 24; I.C.A., § 24-2401; am. 1955, ch. 200, § 1, p. 429; am. 1965, ch. 169, § 1, p. 330; am. 1979, ch. 2, § 1, p. 5; am. 1985, ch. 9, § 1, p. 12.]

**Compiler's notes.** Section 2 of S.L. 1979, ch. 2 declared an emergency. Approved February 21, 1979.

**Cross ref.** Cruelty to animals, § 25-3501 et seq.

Dog fights, participating or aiding in, § 25-3507.

Permitting mischievous animals to run at large, penalty, § 18-5808.

**Collateral References.** 4 Am. Jur. 2d, Animals, § 26.

3A C.J.S., Animals, § 11.

**25-2802. License tags — Proceeds of tax.** — Said license shall be paid in accordance with provisions of section 25-2801, Idaho Code, to the office or officer of the county as designated by the board of county commissioners of said county, who shall thereupon give to the person paying it a receipt reciting the owner's name and the number of the license, and also a metal tag or disc bearing the year of issue, the name of the county, and a license number corresponding with that mentioned in the receipt. The proceeds thereof shall be paid into the general fund of the county. In the event of loss of license tag, a duplicate, so stamped, shall be provided the owner by the county, at a reasonable cost for each duplicate tag. [1927, ch.

20, § 2, p. 24; I.C.A., § 24-2402; am. 1955, ch. 200, § 2, p. 429; am. 1978, ch. 299, § 1, p. 756; am. 1985, ch. 9, § 2, p. 12.]

**Compiler's notes.** Section 3 of S.L. 1955, 3A C.J.S., Animals, § 11. ch. 200 is compiled as § 25-2806.

**Collateral References.** 4 Am. Jur. 2d, Animals, § 24.

**25-2803. Dogs at large — Collar and tag required.** — No dog shall be permitted to go at large within the said county without having a collar about its neck with a license tag or disc attached thereto bearing the number of the license issued by the county as herein set forth, or by some municipality within said county. A violation of this section is an infraction punishable as provided in section 18-113A, Idaho Code. [1927, ch. 20, § 3, p. 24; I.C.A., § 24-2403; am. 1999, ch. 245, § 1, p. 632.]

**Compiler's notes.** Section 2 of S.L. 1999, ch. 245, is compiled as § 25-2805.

**25-2804. Taking up dogs without collar and tag.** — After sixty (60) days from the date of the board's meeting at which this measure is adopted, it shall be the duty of the sheriff of the county to seize and impound any and all dogs, other than those located in a municipality within said county which has enacted and is enforcing a dog license law, at large without a collar with such license tag or disc as prescribed in section 25-2803, Idaho Code. No dog which is impounded pursuant to this section shall be killed before five (5) days, excluding weekends and holidays, have elapsed from the time of the taking up of the dog. After the five (5) days, excluding weekends and holidays, have elapsed and a reasonable effort has failed to locate the owner, the sheriff or his delegate may kill the dog in a humane manner. It shall be the duty of the sheriff of the county or his delegate also to seize and impound any and all such dogs at large wearing collars with such license tags or discs, on which the owner has failed to obtain or renew the annual license; provided, that when a dog wearing a collar with a license attached has been taken up, the sheriff shall notify the owner, if known, who may thereupon recover possession of the dog on payment of the license fee, costs, and any pertinent county fine. [1927, ch. 20, § 4, p. 24; I.C.A., § 24-2404; am. 1941, ch. 135, § 1, p. 268; am. 1978, ch. 298, § 1, p. 755.]

**Collateral References.** 4 Am. Jur. 2d Animals, §§ 24, 25.

3A C.J.S., Animals, § 12.

**25-2805. Dogs running at large — Vicious dogs — Penalty.** — (1) Any person, who, after complaint has been made by any person to the sheriff, who shall serve a copy of said notice upon such person complained of, willfully or negligently permits any dog owned or possessed or harbored by him to be, or run, at large without a competent and responsible attendant or master, within the limits of any city, town, or village or in the vicinity of any farm, pasture, ranch, dwelling house, or cultivated lands of another, or who willfully or negligently fails, neglects or refuses to keep any such dog



securely confined within the limits of his own premises when not under the immediate care and control of a competent and responsible attendant or master, shall be guilty of an infraction punishable as provided in section 18-113A, Idaho Code.

(2) Any dog which, when not physically provoked, physically attacks, wounds, bites or otherwise injures any person who is not trespassing, is vicious. It shall be unlawful for the owner or for the owner of premises on which a vicious dog is present to harbor a vicious dog outside a secure enclosure. A secure enclosure is one from which the animal cannot escape and for which exit and entry is controlled by the owner of the premises or owner of the animal. Any vicious dog removed from the secure enclosure must be restrained by a chain sufficient to control the vicious dog. Persons guilty of a violation of this subsection, and in addition to any liability as provided in section 25-2806, Idaho Code, shall be guilty of a misdemeanor. For a second or subsequent violation of this subsection, the court may, in the interest of public safety, order the owner to have the vicious dog destroyed or may direct the appropriate authorities to destroy the dog. [1919, ch. 72, § 1, p. 249; C.S., § 1912; I.C.A., § 24-2405; am. 1998, ch. 61, § 1, p. 219; am. 1999, ch. 245, § 2, p. 632.]

**Compiler's notes.** Section 1 of S.L. 1999, ch. 245, is compiled as § 25-2803.

**Cross ref.** Dogs running at large pursuing deer and big game, § 36-1101.

Penalty for misdemeanor when not otherwise provided, § 18-113.

dogs running at large the same as statute relating thereto would not render invalid a conviction obtained under the city ordinance. *State v. White*, 67 Idaho 309, 177 P.2d 472 (1947).

#### **City Ordinances.**

Fact that city ordinance did not classify

**25-2806. Liability for livestock and poultry killed by dogs.** — The owner, possessor, or harbinger of any dog or animal that kills, worries, or wounds any livestock and poultry which are raised and kept in captivity for domestic or commercial purposes, is liable to the owner of the same for the damages and costs of suit, to be recovered before any court of competent jurisdiction:

1. In the prosecution of actions under the provisions of this section it is not necessary for the plaintiff to show that the owner, possessor, or harbinger of such dog or other animal had knowledge of the fact that such dog or other animal would kill or wound livestock or poultry which are raised and kept in captivity for domestic or commercial purposes.

2. Any person, on finding any dog, not on the premises of its owner or possessor, worrying, wounding, or killing any livestock or poultry which are raised and kept in captivity for domestic or commercial purposes, may, at the time of so finding said dog, kill the same, and the owners thereof can sustain no action for damages against any person so killing such dog. [1867, p. 104, § 4; R.S., § 1205; reen. R.C. & C.L., § 1220; C.S., § 1911; I.C.A., § 24-2406; am. 1947, ch. 170, § 1, p. 427; am. 1955, ch. 200, § 3, p. 429.]

**Compiler's notes.** Section 2 of S.L. 1955, ch. 200 is compiled as § 25-2802.

**Sec. to sec. ref.** This section is referred to in § 25-2805.



**Collateral References.** 4 Am. Jur. 2d, Animals, § 73.  
3A C.J.S., Animals, §§ 194-197.

**25-2807. Dogs as property — Proof of value.** — Dogs are property; and when the value of any dog is material in any civil or criminal proceeding in this state, the same may be established under the usual rules of evidence relating to values of personal property. No entity of state or local government may by ordinance or regulation prevent the owner of any dog from protecting it from loss by the use of an electronic locating collar. [1927, ch. 211, § 1, p. 294; I.C.A., § 24-2407; am. 1991, ch. 72, § 1, p. 176.]

**Value.**

Dogs are domestic animals having a value.  
Smith v. Costello, 77 Idaho 205, 290 P.2d 742,  
56 A.L.R.2d 1020 (1955).

**Collateral References.** 4 Am. Jur. 2d, Animals, § 6.

3A C.J.S., Animals, § 5.

**25-2808. Dogs used in law enforcement.** — Neither the state of Idaho, nor any city or county, nor any peace officer employed by any of them, shall be criminally liable under the provisions of section 25-2805, Idaho Code, or civilly liable in damages for injury committed by a dog when: (1) the dog has been trained to assist in law enforcement; and (2) the injury occurs while the dog is reasonably and carefully being used in the apprehension, arrest or location of a suspected offender or in maintaining or controlling the public order. [I.C., § 25-2808, as added by 1981, ch. 331, § 1, p. 691; am. 1999, ch. 312, § 1, p. 778.]

**Compiler's notes.** Section 2 of S.L. 1999, ch. 312 declared an emergency. Approved March 24, 1999.

## CHAPTER 29

### BEEF PROMOTION

**SECTION.**

25-2901. Beef council created.  
25-2902. Members — Qualifications.  
25-2903. Members — Appointment — Terms.  
25-2904. Council officers — Meetings — Expenses.  
25-2905. Definitions.  
25-2906. Council — Powers and duties.

**SECTION.**

25-2907. Assessments — Collection.  
25-2908. Disbursements.  
25-2909. Deposit and disbursement of funds.  
25-2910. Bonding — Records — Audits.  
25-2911. Assessment liens — Priority.  
25-2912. Failure or refusal to pay assessment.

**25-2901. Beef council created.** — There is hereby created in the department of self-governing agencies the Idaho beef council, which shall be composed of eight (8) members appointed by the governor. The membership of the beef council shall consist of two (2) dairymen, three (3) beef producers, two (2) cattle feeders and one (1) marketman. In making the appointments, the governor shall take into consideration recommendations made to him by organizations who represent or who are engaged in the same type of production as the proposed member of the council. [1967, ch. 222, § 1, p. 670; am. 1974, ch. 13, § 14, p. 138; am. 1997, ch. 96, § 1, p. 225.]

**Compiler's notes.** Former §§ 25-2901 — 25-2907 which comprised S.L. 1959, ch. 120, §§ 1-7, p. 260; am. 1965, ch. 91, §§ 1-3, p. 150; I.C.A., § 25-2902A as added by 1965, ch. 91, § 2, p. 150 were repealed by § 13 of S.L. 1967, ch. 222.

Sections 13 and 15 of S.L. 1974, ch. 13 are compiled as §§ 22-3702 and 3-402, respectively.

Section 2 of S.L. 1997, ch. 96 is compiled as § 25-2903.

Section 194 of S.L. 1974, ch. 13 provided that the act should take effect on and after July 1, 1974.

**Sec. to sec. ref.** This chapter is referred to in §§ 67-2601 and 67-5303.

**25-2902. Members — Qualifications.** — Each member of the council shall be a citizen of the United States and a bona fide resident of this state, a member of the organization which has recommended his appointment to the governor, and shall derive a substantial portion of his income from the production on business which he represents upon the council. The qualifications of each member shall remain in effect during his entire term of office or his office shall be declared vacant by the governor. The governor shall have the power to remove any council member at will. [1967, ch. 222, § 2, p. 670.]

**Compiler's notes.** Former § 25-2902 was repealed. See Compiler's note, § 25-2901.

**25-2903. Members — Appointment — Terms.** — The governor shall appoint all members of the council for a term of three (3) years. At the end of each of the above terms the governor shall appoint all successors in office for a term of three (3) years.

Vacancies in any unexpired term shall be filled by the governor for the remainder of the unexpired term. The member appointed to fill the vacancy shall represent the same interests as the person whose office has become vacant. [1967, ch. 222, § 3, p. 670; am. 1997, ch. 96, § 2, p. 225.]

**Compiler's notes.** Former § 25-2903 was repealed. See Compiler's note, § 25-2901.

Section 1 of S.L. 1997, ch. 96 is compiled as § 25-2901.

**25-2904. Council officers — Meetings — Expenses.** — The council shall elect annually a chairman, vice chairman and a secretary-treasurer from among its members. The council shall meet regularly once each six (6) months, and at such other times as called by the chairman or when requested by two (2) or more members of the council. Members shall be compensated as provided by section 59-509(f), Idaho Code. [1967, ch. 222, § 4, p. 670; am. 1980, ch. 247, § 23, p. 582; am. 1997, ch. 96, § 3, p. 225.]

**Compiler's notes.** Former § 25-2904 was repealed. See Compiler's note, § 25-2901.

Section 4 of S.L. 1997, ch. 96 is compiled as § 25-2907.

Sections 22 and 24 of S.L. 1980, ch. 247 are compiled as §§ 25-1102 and 25-3108, respectively.

**25-2905. Definitions.** — As used in this act, unless the context requires otherwise:

1. The term "beef" means and includes beef, beef products, veal and veal products.

2. The term "council" means the Idaho beef council.
3. The term "board" means the state brand board.
4. The term "fiscal year" means the fiscal year commencing on July 1, and ending on the next succeeding June 30.
5. The term "dairyman" means a person engaged in the production of fluid milk.
6. The term "beef producer" means a person who raises, breeds or grows cattle or calves for beef production.
7. The term "cattle feeder" means a person engaged in feeding cattle.
8. The term "cattle" means and includes calves.
9. The term "marketman" means a person actively engaged in operating a public livestock auction in this state. [1967, ch. 222, § 5, p. 670.]

**Compiler's notes.** Former § 25-2905 was repealed. See Compiler's note, § 25-2901. 222 which is compiled as §§ 25-2901 — 25-2912.  
The words "this act" refer to S.L. 1967, ch.

**25-2906. Council — Powers and duties.** — The council shall have the following powers and duties:

1. Conform and comply with the federal beef promotion and research order issued by the United States department of agriculture as long as the federal beef promotion and research order is in effect.
2. Conduct scientific research to discover and develop the commercial value of beef.
3. Enter into contracts which it deems appropriate in carrying out the promotion of the cattle industry of this state.
4. Sue and be sued as a council, without individual liability of the council members, when the council is acting within the scope of the powers of this act.
5. Make grants, donations or contributions to any agency which will promote the cattle industry of this state on both a national, state or local level.
6. Employ subordinate officers and employees of the council, prescribe their duties and fix their compensation.
7. Accept grants, donations, contributions or gifts, from any source, for expenditures for any purpose consistent with the provisions of this act.
8. Prepare each year a proposed budget of the council for the next succeeding fiscal year, and provide upon request a copy of this budget to any person who pays an assessment under this act.
9. Adopt, rescind, modify or amend all proper functional regulations, orders, and resolutions for the exercise of its powers and duties, which shall be provided to anyone upon request.
10. Conduct public relation programs for beef and beef products. [1967, ch. 222, § 6, p. 670; am. 1986, ch. 246, § 1, p. 665.]

**Compiler's notes.** Former § 25-2906 was repealed. See Compiler's note, § 25-2901. For words "this act" see Compiler's notes, § 25-2905.



**25-2907. Assessments — Collection.** — (1) There is hereby levied and imposed upon all cattle an assessment of not more than fifty cents (50¢) per head, to be paid by the owner.

(2) The assessment imposed by this section shall be collected:

(a) Each time a change in ownership of cattle occurs.

(b) When Idaho cattle leave the state permanently even though no change in ownership occurs.

(3) The state brand inspector shall collect state or other beef promotion assessments in addition to, at the same time and in the same manner as the fee charged for the state brand inspection. Such assessment so collected belongs to and shall be paid to the Idaho beef council, either directly or later by remittance together with a report. The council shall reimburse the state brand inspector for the reasonable and necessary expenses incurred for such collection, in an amount determined by the council and the inspector. [1967, ch. 222, § 7, p. 670; am. 1971, ch. 104, § 1, p. 225; am. 1981, ch. 28, § 1, p. 46; am. 1984, ch. 5, § 1, p. 9; am. 1984, ch. 62, § 1, p. 111; am. 1985, ch. 249, § 1, p. 582; am. 1986, ch. 246, § 2, p. 665; am. 1997, ch. 96, § 4, p. 225.]

**Compiler's notes.** Former § 25-2907 was repealed. See Compiler's note, § 25-2901.

Section 3 of S.L. 1997, ch. 96 is compiled as § 25-2904.

Section 3 of S.L. 1986, ch. 246 declared an

emergency. Approved April 4, 1986.

**Sec. to sec. ref.** This chapter is referred to in § 67-5303.

This section is referred to in §§ 25-1101, 25-1121 and 25-1123.

**25-2908. Disbursements.** — A total of at least twenty per cent (20%) of all funds so collected by the council shall be expended by it to a national beef promotion program for use in promotional, research and educational activities. [1967, ch. 222, § 8, p. 670; am. 1971, ch. 104, § 2, p. 225; am. 1988, ch. 171, § 1, p. 302; am. 1997, ch. 96, § 5, p. 225.]

**Compiler's notes.** Section 2 of S.L. 1988, ch. 171 read: "An emergency existing therefor, which emergency is hereby declared to exist, Section 1 of this act shall be in full force and effect on and after its passage and approval and when the Attorney General certifies to the Secretary of State and the Beef Council that a federal marketing order regarding beef

assessments and a provision in that marketing order prohibiting refunds of assessments are valid and binding.

The Attorney General's required certification must be made prior to October 1, 1988. If the certification is not made, then Section 1 of this act shall be null, void and of no force and effect." Approved March 26, 1988.

**25-2909. Deposit and disbursement of funds.** — Immediately upon receipt, all moneys received by the council shall be deposited in one (1) or more separate accounts in the name of the council in one (1) or more banks or trust companies approved under chapter 27 of title 67, Idaho Code, as state depositories. The council shall designate such banks or trust companies. All funds so deposited are hereby appropriated for the purpose of carrying out the provisions of this act.

Funds can be withdrawn or paid out of such accounts only upon checks or other orders upon such accounts signed by two (2) officers designated by the council.

Any assessments or money that may be deposited hereunder with the treasurer of the state of Idaho shall be paid to the council, and the state

treasurer shall be reimbursed for the reasonable and necessary expense incurred.

The right is reserved to the state of Idaho to audit the funds of the council at any time. [1967, ch. 222, § 9, p. 670.]

**Compiler's notes.** For words "this act" see Compiler's notes, § 25-2905.

**25-2910. Bonding — Records — Audits.** — The person or persons who receive and disburse the moneys of the council shall be bonded, by and in an amount to be determined by the council.

Accurate records of all receipts and disbursements shall be kept, and audited annually by a certified public accountant, whose report shall be filed in the council office and made available upon request to any person paying assessments under this act. [1967, ch. 222, § 10, p. 670.]

**Compiler's notes.** For words "this act" see Compiler's notes, § 25-2905.

**25-2911. Assessment liens — Priority.** — All assessments which become due and owing under the provisions of this act shall constitute a lien upon the cattle sold which shall be prior to all liens except those having priority under state law. [1967, ch. 222, § 11, p. 670.]

**Compiler's notes.** For words "this act" see Compiler's notes, § 25-2905.

**25-2912. Failure or refusal to pay assessment.** — The assessment levied by this chapter is mandatory; and failure or refusal to pay the same shall constitute a misdemeanor. [1967, ch. 222, § 12, p. 670.]

**Compiler's notes.** Section 13 of S.L. 1967, ch. 222 repealed the former provisions of this chapter.

Section 14 of S.L. 1967, ch. 222 provided as follows: "If any provision of this act is declared unconstitutional, or the applicability thereof to any person or circumstance is held

invalid, the constitutionality of the remainder of the act and the applicability thereof to other persons and circumstances shall not be affected thereby."

Section 15 of S.L. 1967, ch. 222 provided that this act shall be effective on July 1, 1967.

## CHAPTER 30

### FUR FARMS

#### SECTION.

- 25-3001. Fur farming deemed agricultural pursuit.
- 25-3002. Transfer of functions from fish and game commission to department of agriculture.
- 25-3003. Application of laws relating to livestock and domestic animals.

#### SECTION.

- 25-3004. Rules for disease prevention.
- 25-3005. Inspection of fur farms.
- 25-3006. Penalty for violations.
- 25-3007. Property rights in fur-bearing animals.

**25-3001. Fur farming deemed agricultural pursuit.** — It shall be lawful for any person, persons, association or corporations to engage in the business of propagating, breeding, owning or controlling domestic fur-bearing animals, which are defined as fox, mink, chinchilla, karakul, marten, fisher, muskrat, nutria, beaver, and all other fur-bearing animals, raised in captivity for breeding or other useful purposes. For the purposes of all classification and administration of the laws of the state of Idaho, and all administrative orders and rules and regulations pertaining thereto, the breeding, raising, producing or marketing of such animals or their products by the producer shall be deemed an agricultural pursuit; such animals shall be deemed livestock and their products shall be deemed agricultural products; the persons engaged in such agricultural pursuits shall be deemed farmers, fur farmers, fur breeders, or fur ranchers; the premises within which such pursuit is conducted shall be deemed farms, fur farms, or fur ranches. [1961, ch. 152, § 1, p. 218.]

**Sec. to sec. ref.** This chapter is referred to in §§ 36-701 and 36-501.

**25-3002. Transfer of functions from fish and game commission to department of agriculture.** — All the functions of the fish and game commission and the fish and game department, which affect the breeding, raising, producing, marketing, or any other phase of the production or distribution, of domestic fur-bearing animals, or the products thereof, are hereby transferred to and vested in the department of agriculture and the administrator of the division of animal industries; provided, that this act shall not limit or affect the powers or duties of the fish and game commission and the fish and game department relating to nondomestic fur-bearing animals or the capture and taking thereof. [1961, ch. 152, § 2, p. 218; am. 1974, ch. 18, § 168, p. 364.]

**Compiler's notes.** The words "this act" refer to S.L. 1961, ch. 152 which is compiled as §§ 25-3001 — 25-3007.

Sections 167 and 169 of S.L. 1974, ch. 18 are compiled as §§ 25-2727 and 25-3004, respectively.

**25-3003. Application of laws relating to livestock and domestic animals.** — All of the provisions of title 25, chapter 2, Idaho Code, as amended, applicable to livestock and domestic animals, except those provisions which by their terms are restricted to swine, bovine animals, dairy or breeding cattle, or range cattle, or other particular kind or kinds of livestock and domestic animals to the exclusion of livestock or domestic animals generally, are applicable to domestic fur-bearing animals. [1961, ch. 152, § 3, p. 218.]

**25-3004. Rules for disease prevention.** — The administrator of the division of animal industries is hereby authorized and empowered to make, promulgate, and enforce general and reasonable rules and regulations not inconsistent with law, for the prevention of the introduction or dissemination of diseases among domestic fur-bearing animals of this state, and to otherwise effectuate enforcement of the provisions of title 25, chapter 2,



Idaho Code, applicable to domestic fur-bearing animals. [1961, ch. 152, § 4, p. 218; am. 1974, ch. 18, § 169, p. 364.]

**25-3005. Inspection of fur farms.** — The division of animal industries and any of its officers shall have the right at any time to inspect any fur farm, and may go upon such farms or any part thereof to inspect and examine the same and any animals therein. [1961, ch. 152, § 5, p. 218; am. 1974, ch. 18, § 170, p. 364.]

**25-3006. Penalty for violations.** — Any person, firm or corporation violating any of the provisions of title 25, chapter 2, Idaho Code, applicable to domestic fur-bearing animals, or of the rules or regulations promulgated by the division of animal industries for the enforcement thereof shall be guilty of a misdemeanor, and upon conviction, shall be subject to a fine of not less than one hundred dollars (\$100) nor more than five thousand dollars (\$5,000) for each offense. [1961, ch. 152, § 6, p. 218; am. 1974, ch. 18, § 171, p. 364.]

**Compiler's notes.** Section 172 of S.L. 1974, ch. 18 is compiled as § 25-3207. act should take effect on and after July 1, 1974.  
Section 263 of S.L. 1974, ch. 18 provided the

**25-3007. Property rights in fur-bearing animals.** — Domestic fur-bearing animals shall be, together with their offspring and increases the subject of ownership, lien and absolute property rights, (the same as purely domestic animals) in whatever situation, location, or condition such animals may thereafter become, or be, and regardless of their remaining in, or escaping from such restraint or captivity. [1961, ch. 152, § 7, p. 218.]

**Compiler's notes.** The words in parentheses so appeared in the law as enacted.

## CHAPTER 31

### DAIRY PRODUCTS — MARKETING

#### SECTION.

- 25-3101. Protection of dairy markets — Purpose.
- 25-3102. Dairy products commission — Establishment — Members.
- 25-3103. Definitions.
- 25-3104. Representative districts.
- 25-3105. Producer members — Qualifications — Removal.
- 25-3106. Producer members — Term of office — Appointments.
- 25-3107. Producer members — Nominations — Elections.
- 25-3108. Salary.
- 25-3109. Commission chairman — Administrator — Fidelity bond.
- 25-3110. Meetings.
- 25-3111. Policies — Duties, authorities, and powers.

#### SECTION.

- 25-3112. Deposit and disbursement of funds.
- 25-3113. Bond requirement.
- 25-3114. Administrator of this act — Appointment — Salary.
- 25-3115. Office for administrator.
- 25-3116. Nonliability of state.
- 25-3117. Tax levy.
- 25-3118. Purchaser's statements.
- 25-3119. Persons required to pay tax.
- 25-3120. Inspection of premises and records.
- 25-3121. Violation of this act — Misdemeanor — Fines.
- 25-3122. Referendum regarding continuance of commission.
- 25-3123. Discontinuation.

**25-3101. Protection of dairy markets — Purpose.** — It is to the interest of all the people that the abundant natural resources of Idaho be protected, fully developed and uniformly distributed. Among the agricultural industries of the state of Idaho that contribute to the economic welfare of the state is the dairy industry. Because of problems incurred in marketing the dairy products produced in this state and because this marketing has become more and more difficult in the presently available markets, it is necessary, in order to provide a profitable enterprise for the dairy industry of the state and to promote employment labor and to assist the dairymen of the state and those in the various industries dependent upon the dairymen, that additional markets be found and developed. It is the purpose of this act to promote the public health and welfare of the citizens of our state by providing means for the protection, promotion, study, research, analysis and development of markets concerning the production and marketing of Idaho dairy products. [1969, ch. 140, § 1, p. 435.]

**Compiler's notes.** The words "this act" refer to S.L. 1969, ch. 140, compiled as §§ 25-3101 — 25-3123.

**Sec. to sec. ref.** This chapter is referred to in §§ 67-2601 and 67-5303.

**25-3102. Dairy products commission — Establishment — Members.** — There is hereby created and established in the department of self-governing agencies the "Idaho dairy products commission" to be composed of nine (9) producer members, one (1) from each of the nine (9) commission districts referred to in section 25-3104, Idaho Code, who shall be elected by the producers of said district as hereinafter set forth, and they shall hold office for a term of three (3) years. The dean of the college of agriculture, University of Idaho, or his duly authorized representative, and a duly authorized representative of the Idaho milk processors association, shall be ex officio members without vote of the commission. [1969, ch. 140, § 2, p. 435; am. 1974, ch. 13, § 9, p. 138.]

**Compiler's notes.** For words "this act" see Compiler's notes, § 25-3101.

Section 8 of S.L. 1974, ch. 13 is compiled as § 22-3002.

**25-3103. Definitions.** — As used in this act, unless the context requires otherwise:

"Commission" means the Idaho dairy products commission;

To "ship" means to deliver or consign milk or cream to a person dealing in, processing, distributing, or manufacturing dairy products for sale, for human or animal consumption, industrial or medicinal uses;

"Dealer" means one who handles, ships, buys, processes, and sells dairy products, or who acts as sales or purchasing agent, broker, or factor of dairy products;

"Producer" means a person who produces milk from cows and sells it for human or animal food, or medicinal or industrial uses;

"Producer-handler" means any person who produces milk or milk fat and uses such production, or any part of it, for processing. For the purposes of this act, a producer-handler is a producer in any transaction which involves

the delivery of unprocessed milk or milk fat produced by him or received from another producer and processed by such producer-handler;

“Director” means the director of the department of agriculture of the state of Idaho;

“Department” means the Idaho department of agriculture.[.]

“Person” means and includes individuals, corporations, partnerships, trusts, associations, cooperatives and any and all other business units, devices and arrangements. [1969, ch. 140, § 3, p. 435; am. 1974, ch. 13, § 10, p. 138.]

**Compiler’s notes.** For words “this act” see Section 11 of S.L. 1974, ch. 13 is compiled as Compiler’s notes, § 25-3101. § 22-3302.

The bracketed semicolon was inserted by the compiler.

**25-3104. Representative districts.** — Each elected commission member shall represent one (1) of the following districts:

(1) District I, which shall include the counties of Benewah, Bonner, Boundary, Clearwater, Idaho, Kootenai, Latah, Lewis, Nez Perce, Shoshone;

(2) District II, which shall include the counties of Adams, Boise, Gem, Payette, Valley, Washington;

(3) District III, which shall include the counties of Canyon, Owyhee;

(4) District IV, which shall include the counties of Ada, Elmore;

(5) District V, which shall include the counties of Blaine, Camas, Gooding, Jerome, Lincoln;

(6) District VI, which shall include the counties of Cassia, Minidoka, Twin Falls;

(7) District VII, which shall include the counties of Butte, Clark, Fremont, Jefferson, Madison, Teton, Custer, Lemhi;

(8) District VIII, which shall include the counties of Bannock, Bingham, Bonneville;

(9) District IX, which shall include the counties of Bear Lake, Caribou, Franklin, Oneida, Power. [1969, ch. 140, § 4, p. 435.]

**Sec. to sec. ref.** This section is referred to in § 25-3102.

**25-3105. Producer members — Qualifications — Removal.** — Each of the nine (9) producer members of the commission shall:

(1) Be a citizen over twenty-five (25) years of age and a resident of this state and the district which he represents; and

(2) Be and for the five (5) years last preceding his election have been actually engaged in producing dairy products within this state. These qualifications must continue during each member’s term of office.

(3) Any commission member who discontinues to produce dairy products in this state, or changes his residence to another district during the term of office for which he has been selected, shall within thirty (30) days of such discontinuance or change of residence submit his resignation from the commission to the chairman of the commission. Removal procedures may be instituted against any commission member by petition signed by at least



thirty percent (30%) of the producers within the commission member's district. [1969, ch. 140, § 5, p. 435.]

**25-3106. Producer members — Term of office — Appointments. —** The regular term of office of each producer member shall be three (3) years. The first commission members shall be appointed by the governor, and their terms shall terminate as follows:

- (1) District I, IV & VII on July 1, 1970;
- (2) District II, V & VIII on July 1, 1971;
- (3) District III, VI & IX on July 1, 1972.

All other commission members shall be elected as provided in section 25-3107 and their respective terms shall end on July first of each third year thereafter.

Any vacancies that occur on the commission shall be filled by appointment by the other members of the commission, and such appointee shall hold office for the remainder of the term for which he is appointed. [1969, ch. 140, § 6, p. 435.]

**25-3107. Producer members — Nominations — Elections. —** Producer members of the commission shall be nominated and elected by producers within the district that such producer members represent in the year in which a commission member's term shall expire. Such producer members receiving the largest number of the votes cast in the respective districts which they represent shall be elected. The election shall be by secret mail ballot and under the supervision of the state department of agriculture.

Nomination for candidates to be elected to the commission shall be conducted by a nominating committee. Thirty (30) days prior to the date of election the commission shall select a nominating committee from the district, who in turn will present the names of three (3) qualified nominees; in addition thereto, producer members of the commission may be nominated by a petition of nomination signed by not less than twenty-five (25) active producers each of whom shall reside in the district wherein the nominee resides, and the names of all such nominees nominated by petition shall be presented to the state department of agriculture not later than the first day of May of the year in which the election for such district is to be held.

Ballots for electing members to the commission will be mailed by the department to all eligible producers no later than May 15th in districts where elections are to be held and such ballots to be valid shall be returned postmarked no later than May 31st of the year mailed, to the department.

All costs and expenses of the department shall be paid by the commission. All materials and other necessary supplies shall be provided to the department at its request. [1969, ch. 140, § 7, p. 435.]

**25-3108. Salary. —** Members of the commission shall be compensated as provided by section 59-509(h), Idaho Code. [1969, ch. 140, § 8, p. 435; am. 1973, ch. 20, § 1, p. 41; am. 1980, ch. 247, § 24, p. 582; am. 1990, ch. 142, § 1, p. 321.]

**Compiler's notes.** Sections 23 and 25 of S.L. 1980, ch. 247 are compiled as §§ 25-2904 and 33-104, respectively.

**25-3109. Commission chairman — Administrator — Fidelity bond.** — The commission shall elect a chairman and may employ an administrator who is not a member of the commission. The commission shall require the administrator of the commission to give a fidelity bond executed by a surety company authorized to do business in this state in favor of the commission, in such sum, and containing such terms and conditions, as the commission may prescribe. The cost of any such fidelity bond shall be paid from moneys collected pursuant to this act. [1969, ch. 140, § 9, p. 435.]

**Compiler's notes.** For words "this act" see Compiler's notes, § 25-3101.

**25-3110. Meetings.** — The commission shall meet at least once every three (3) months regularly and at such other times as called by the chairman. The chairman may call special meetings of the commission at any time or place. [1969, ch. 140, § 10, p. 435.]

**25-3111. Policies — Duties, authorities, and powers.** — (1) Consistent with the general purposes of this act, the commission shall establish the policies to be followed in the accomplishments of such purposes.

(2) In the administration of this act, the commission shall have the following duties, authorities and powers:

- (a) To conduct a campaign of research, education and publicity.
  - (b) To find new markets for dairy products and their by-products.
  - (c) To give, publicize and promulgate reliable information showing the value of milk, cream, and dairy products for any purpose for which they are found useful and profitable.
  - (d) To make public and encourage the widespread national and international use of dairy products and by-products produced in Idaho.
  - (e) To investigate and participate in studies of the problems peculiar to the dairy producers in Idaho.
- (3) The commission shall have the duty, power and authority:
- (a) To take such action as the commission deems necessary or advisable in order to stabilize and protect the dairy industry of the state and the health and welfare of the public.
  - (b) To sue and be sued.
  - (c) To enter into such contracts as may be necessary or advisable.
  - (d) To appoint and employ officers, agents and other personnel, including experts in agriculture and dairying and the publicizing of the products thereof, and to prescribe their duties and to fix their compensation.
  - (e) To make use of such advertising means and methods as the commission deems advisable and to enter into contracts and agreements for research and advertising within and without the state.
  - (f) To cooperate with any local, state or national organization or agency, whether voluntary or created by the law of any state or by national law,



engaged in work or activities similar to the work and activities of the commission, and to enter into contracts and agreements with such organizations or agencies for carrying on a joint campaign of research, education and publicity in reciprocal enforcement.

(g) To lease, purchase or own real or personal property deemed necessary in the administration of this act.

(h) To prosecute in the name of the state of Idaho any suit or action for collection of the tax or assessment provided for in this act.

(i) To adopt, rescind, modify and amend all necessary and proper orders, resolutions and regulations for the procedure and exercise of its powers and the performance of its duties.

(j) To incur indebtedness and carry on all business activities.

(k) To keep books and records and accounts of all its doings, which books, records and accounts shall be open to inspection by the state controller and public at all times. [1969, ch. 140, § 11, p. 435; am. 1994, ch. 180, § 41, p. 420.]

**Compiler's notes.** For words "this act" see Compiler's notes, § 25-3101.

Section 241 of S.L. 1994, ch. 180 provided that such act should become effective on and after the first Monday in January, 1995 [January 2, 1995] if the amendment to the Constitution of Idaho changing the name of the state auditor to state controller [1994 S.J.R. No. 109, p. 1493] was adopted at the general election held on November 8, 1994. Since such amendment was adopted, the amendment to this section by § 41 of S.L. 1994, ch. 180 became effective January 2, 1995.

Section 40 of S.L. 1994, ch. 180 is compiled as § 25-1728.

Section 241 of S.L. 1994, ch. 180 provided: "This act shall be in full force and effect on and after the first Monday of January, 1995, if the state board of canvassers has certified that an amendment to the Constitution of the State of Idaho has been adopted at the gen-

eral election of 1994 to change the name of the state auditor to state controller."

#### **Limitation on Powers.**

The Idaho Dairy Products Commission's duty, power and authority to take such action as the commission deems necessary or advisable in order to stabilize and protect the dairy industry of the state and the health and welfare of the public is clearly limited by the legislature's express statutory language in § 59-1009 mandating that the public records and other matters be open to the inspection of the public; accordingly the Commission's list of dairy product producers, who paid the taxes levied by § 25-3117 to dairy product dealers, was subject to disclosure even though the dealers gave the names of the producers to the Commission in confidence. *Dalton v. Idaho Dairy Prods. Comm'n*, 107 Idaho 6, 684 P.2d 983 (1984).

**25-3112. Deposit and disbursement of funds.** — (1) Immediately upon receipt, all moneys received by the commission shall be deposited in one or more separate accounts in the name of the commission in one or more banks or trust companies approved under chapter 27, title 67, Idaho Code, as state depositories. The commission shall designate such banks or trust companies. All funds so deposited are hereby continuously appropriated for the purpose of carrying out the provisions of this chapter.

(2) Funds can be withdrawn or paid out of such accounts only upon checks or other orders upon such accounts signed by two (2) officers designated by the commission.

(3) The right is reserved to the state of Idaho to audit the funds of the commission at any time.

(4) On or before January 15 of each year, the commission shall file with the senate agricultural affairs committee, the house agricultural affairs committee, the legislative services office, the state controller, and the



division of financial management, a report showing the annual income and expenses by standard classification of the commission during the preceding fiscal year. The report shall also include an estimate of income to the commission for the current and next fiscal year and a projection of anticipated expenses by category for the current and next fiscal year. From and after January 15, 1989, the report shall also include a reconciliation between the estimated income and expenses projected and the actual income and expenses of the preceding fiscal year.

(5) All moneys received or expended by the commission shall be audited annually by a certified public accountant designated by the commission, who shall furnish a copy of such audit to the state controller and to the senate agricultural affairs committee and the house agricultural affairs committee. The audit shall be completed within ninety (90) days following the close of the fiscal year.

(6) The expenditures of the commission are expressly exempted from the provisions of sections 67-2007 and 67-2008, Idaho Code. [I.C., § 25-3112, as added by 1988, ch. 193, § 2, p. 348; am. 1993, ch. 327, § 13, p. 1186; am. 1994, ch. 180, § 42, p. 420; am. 1996, ch. 159, § 13, p. 502.]

**Compiler's notes.** Former § 25-3112, which comprised 1969, ch. 140, § 12, p. 435, was repealed by S.L. 1988, ch. 193, § 1.

Section 241 of S.L. 1994, ch. 180 provided that such act should become effective on and after the first Monday in January, 1995 [January 2, 1995] if the amendment to the Constitution of Idaho changing the name of the state auditor to state controller [1994 S.J.R. No. 109, p. 1493] was adopted at the general election held on November 8, 1994. Since such amendment was adopted, the amendment to

this section by § 42 of S.L. 1994, ch. 180 became effective January 2, 1995.

Section 3 of S.L. 1988, ch. 193 is compiled as § 25-3117.

Sections 12 and 14 of S.L. 1993, ch. 327 are compiled as §§ 25-2507 and 31-1701, respectively.

Section 43 of S.L. 1994, ch. 180 is compiled as § 26-1023.

Sections 12 and 14 of S.L. 1996, ch. 159 are compiled as §§ 22-4010 and 33-2114, respectively.

**25-3113. Bond requirement.** — The commission may require the administrator, or any agent or employee appointed by the commission, to give a bond payable to the state of Idaho in the amount and with the security and containing the terms and conditions the commission prescribes. The cost of the bond is an administrative expense under this act. [1969, ch. 140, § 13, p. 435.]

**Compiler's notes.** For words "this act" see Compiler's notes, § 25-3101.

**25-3114. Administrator of this act — Appointment — Salary.** — The commission shall appoint an administrator who shall devote full time to the administration of this act. He shall proceed immediately to prepare the plans and general program necessary and adequate to carry out the policies that are adopted by the commission. The administrator shall be paid a reasonable salary fixed by the commission, commensurate with his duties, and all necessary expenses. [1969, ch. 140, § 14, p. 435.]

**Compiler's notes.** For words "this act" see Compiler's notes, § 25-3101.

**25-3115. Office for administrator.** — For the convenience of the majority of those most likely to be affected in the administration of this act, the administrator, upon recommendation of the commission, shall establish and maintain an office for the administrator within the state of Idaho. [1969, ch. 140, § 15, p. 435.]

**Compiler's notes.** For words "this act" see Compiler's notes, § 25-3101.

**25-3116. Nonliability of state.** — The state of Idaho is not liable for the acts or omissions of the commission or any member thereof or any officer, agent or employee thereof. [1969, ch. 140, § 16, p. 435.]

**25-3117. Tax levy.** — (1) From and after the 1st day of July, 1988, there is hereby levied and imposed a tax of not to exceed one percent (1%) of the gross dollar daily or monthly settlements for the sale of all milk and cream produced in the state of Idaho and sold or contracted through commercial channels, which tax shall be due on or before the time when such milk or cream is first sold or contracted in the commercial channels and shall be paid at such time or times as the commission may, by rule or regulation, prescribe, as hereinafter provided, but not later than the 25th day of the month next succeeding the month in which milk or cream is sold or contracted in commercial channels. The tax provided in this section shall be levied and imposed at a rate of not more than one percent (1%) as the commission, by a vote of two-thirds ( $\frac{2}{3}$ ) of its members, establishes.

(2) The tax shall be levied and assessed to the producer at the time of delivery for sale if sold by a producer, and shall be collected by the first purchaser and/or producer-handler and deducted from the amount due the producer, and all money so collected shall be made payable to the Idaho dairy products commission on or before the 25th day of the succeeding month. All such payments shall be sent directly to the commission for deposit. If a purchaser and/or producer-handler fails to remit any money so collected or fails to make deductions for assessments, a penalty of ten percent (10%) shall be added to the amount of any assessments which are unpaid when due under the terms of this chapter.

(3) The tax constitutes a lien prior to all other liens and encumbrances upon such milk or cream except liens which are declared prior by operation of a statute of this state. [1969, ch. 140, § 17, p. 435; am. 1979, ch. 184, § 1, p. 538; am. 1984, ch. 20, § 1, p. 23; am. 1988, ch. 185, § 1, p. 324; am. 1988, ch. 193, § 3, p. 348.]

**Compiler's notes.** This section was amended by two 1988 acts, chapter 185, § 1, effective July 1, 1988 and chapter 193, § 3, effective July 1, 1988, which appear to be compatible and have been compiled together. The amendment by ch. 185 in subsection (1) in the first sentence substituted "July, 1988" for "June, 1979" and in the last sentence added "not more than" following "imposed at a rate of", substituted "as" for "unless" following

"one percent (1%)" and deleted "a rate of less than one percent (1%)" from the end of the sentence. The amendment by ch. 193 in subsection (2) in the first sentence deleted "fund in the office of the state treasurer, state of Idaho" following "Idaho dairy products commission"; deleted "for the previous month's credit of the commission fund" from the end of the first sentence and deleted "in the office of the state treasurer of the state of Idaho" from



the end of the second sentence and substituted "chapter" for "act" at the end of the last sentence.

Sections 2 and 4 of S.L. 1988, ch. 193 are compiled as §§ 25-3112 and 25-3119, respectively.

Section 2 of S. L. 1979, ch. 184 declared an emergency and provided that the act should take effect on and after June 1, 1979. Approved March 29, 1979.

Section 2 of S.L. 1984, ch. 20 declared an emergency. Approved February 27, 1984.

#### ANALYSIS

Disclosure of list of taxpaying producers.

— Public inspection.

#### Disclosure of List of Taxpaying Producers.

The Idaho Dairy Products Commission's duty, power and authority to take such action as the commission deems necessary or advisable in order to stabilize and protect the dairy industry of the state and the health and welfare of the public is clearly limited by the legislature's express statutory language in § 59-1009 mandating that the public records

and other matters be open to the inspection of the public; accordingly the Commission's list of dairy product producers, who paid the taxes levied by this section to dairy product dealers, was subject to disclosure even though the dealers gave the names of the producers to the Commission in confidence. *Dalton v. Idaho Dairy Prods. Comm'n*, 107 Idaho 6, 684 P.2d 983 (1984).

#### — Public Inspection.

The legislature intended the definition of "public records" to be broad enough to include a list of names obtained by an agency in the normal course of carrying out its duties; in addition, the language of § 59-1009 clearly evidences an intent by the legislature to create a very broad scope of government records and information accessible to the public. Thus, a list of names of dairy product producers, who paid the taxes levied by this section, which was compiled by the Idaho Dairy Products Commission fell within the purview of § 59-1009, as "public records and all other matters," and was subject to inspection by a private citizen. *Dalton v. Idaho Dairy Prods. Comm'n*, 107 Idaho 6, 684 P.2d 983 (1984).

**25-3118. Purchaser's statements.** — (1) The purchaser or the producer-handler at the time of settlement, shall make and deliver separate statements for each purchaser to the producer and said statements shall be delivered to the producer at the time of each monthly or bimonthly payment date.

(2) The statements shall be on forms and in such numbers as prescribed and approved by the commission and shall show at least:

- (a) The name or names and address or addresses of the producer.
- (b) The name and address of the purchaser, or the producer-handler.
- (c) The dollar value of the milk and/or cream sold.
- (d) The date of the purchase.

(3) Unlawful or wilful alterations of a statement shall constitute a misdemeanor. [1969, ch. 140, § 18, p. 435.]

**25-3119. Persons required to pay tax.** — The tax imposed in this chapter shall be paid by the first purchaser or producer-handler to the commission. The commission shall receipt the purchaser or producer-handler therefor and promptly deposit the moneys in a bank account in the name of the Idaho dairy products commission. The commission may adopt, rescind, modify and amend regulations not consistent with this chapter, related to the payment and collection of the tax provided for in the chapter. [1969, ch. 140, § 19, p. 435; am. 1988, ch. 193, § 4, p. 348.]

**Compiler's notes.** Section 3 of S.L. 1988, ch. 193 is compiled as § 25-3117.



**25-3120. Inspection of premises and records.** — The commission through its agents may inspect the premises and records of any dealer and/or producer-handler for the purpose of enforcing this act. [1969, ch. 140, § 20, p. 435.]

**Compiler's notes.** For words "this act" see Compiler's notes, § 25-3101.

**25-3121. Violation of this act — Misdemeanor — Fines.** — Any person who shall violate or aid in the violation of any of the provisions of this act shall be guilty of a misdemeanor and upon conviction thereof be punished by a fine of not more than \$300 or imprisonment not to exceed ninety (90) days, or both. Fines collected for violation of this act shall be paid into the "Idaho dairy products commission fund." [1969, ch. 140, § 21, p. 435.]

**Compiler's notes.** For words "this act" see Compiler's note, § 25-3101.

Section 22 of S.L. 1969, ch. 140 read: "This act shall be liberally construed, and if any part or portion thereof be declared invalid, or the application thereof to any person, circumstance or thing is declared invalid, the valid-

ity of the remainder of this act and/or the applicability thereof to any persons, circumstance or thing shall not be affected thereby, and it is the intention of the legislature to preserve any and all parts of this act if possible."

**25-3122. Referendum regarding continuance of commission.** — After five (5) years from the date the commission was created, a referendum may be held at the petition of the producers or at the request of the commission. The question shall be submitted by secret ballots upon which the words "For continuance of the Idaho Dairy Products Commission" and "Against continuance of the Idaho Dairy Products Commission" are printed, with a square before each proposition and a direction to insert an "X" mark in the square before the proposition which the voter favors. In the event a referendum is held as provided in this section, no further referendum on the question of discontinuance of such commission shall be held within five (5) years from the date the result of the previous referendum was declared.

The referendum must be held and supervised by the department of agriculture upon its receiving either of the following:

(1) A petition signed by twenty percent (20%) of the producers or two thousand (2000) producers, whichever is less.

(2) At written request from the commission.

(3) The commission shall pay the costs of any such referendum.

The referendum shall be held, notice thereof given, expenses thereof paid and the result determined, declared and recorded in the office of the secretary of state. No hearings or district meetings shall be made prior to the referendum upon the question of determining whether such referendum should be held.

Notice of such referendum must be given by the commission in a manner determined by them. The ballots must also be prepared by the commission and forwarded to the producer members who shall return them within twenty (20) days after mailing by the commission. [1969, ch. 140, § 23, p. 435.]

**25-3123. Discontinuation.** — If the vote at the referendum provided in section 25-3122, is in favor of discontinuation, the commission shall as rapidly as possible terminate its activities, convert all its assets to cash and do all other things necessary to terminate its activities. At the termination of such activities, any funds remaining in possession of the commission shall be paid to the Idaho dairymen's association. [1969, ch. 140, § 24, p. 435.]

**Compiler's notes.** Section 25 of S.L. 1969, ch. 140 declared an emergency. Approved March 13, 1969.

## CHAPTER 32

### RENDERING ESTABLISHMENTS

#### SECTION.

25-3201. Definitions.

25-3202. License requirement.

25-3203. Establishing standards for establishments prior to application for license.

25-3204. Revocation of licenses.

#### SECTION.

25-3205. Prohibiting unfinished products from intrastate shipment.

25-3206. Enforcement of regulations.

25-3207. Restraining order authorized.

25-3208. Exemptions.

**25-3201. Definitions.** — When used in this act:

(a) The term "rendering establishment" means a place of business that deals in rendering material of animal origin and processes it into finished products in such a way that risk, damage, or nuisance to animal or public health is avoided. Any person who receives from any other person the body of any dead animal for the purposes of obtaining the hide, skin, grease, meat, bones, or parts thereof from such animal for further processing to a finished form as described in paragraph (e) of this section is deemed to be engaged in the business of disposing and rendering of the bodies of dead animals or parts thereof.

(b) The term "rendering material" means and includes any dead animal not slaughtered as food for animals or man, or if slaughtered for food, becomes unsuitable for such use, and includes all parts of dead animals and all inedible by-products of animals slaughtered or processed as food.

(c) The term "animal" means any member of the animal kingdom such as fish, reptiles, birds and mammals, etc.

(d) The term "4-D animals" means dead, dying, disabled, or diseased animals.

(e) The term "finished products" means any product or material processed or manufactured from rendering material or from 4-D animals by a rendering establishment or establishment processing 4-D animals such as bone meal, blood meal, meat meal, tankage, feather meal, tallow, etc., or fresh frozen, partially cooked, or cooked or canned pet, fur animal, or other animal feed.

(f) The term "establishments processing 4-D animals" means a place of business that processes the carcasses or any part of carcasses of 4-D animals to be used as feed for dogs, cats, fur-bearing or other animals.

(g) The term "inspector" means a state employee trained and assigned to inspect rendering plants and establishments processing 4-D animals.



(h) The term "department" means the state department of agriculture.

(i) The term "laboratory tests" means tests conducted as deemed necessary by the department to ensure that the finished product meets required specifications for quality and safety (to include protein analysis, contaminating agents of disease, etc.); such laboratory tests to be performed in laboratories approved as provided in paragraph (h) of this section and on samples of finished products collected by the inspector. [1969, ch. 33, § 1, p. 57.]

**Compiler's notes.** The words "this act" refer to S.L. 1969, ch. 33 which is compiled as §§ 25-3201 — 25-3208.

**Sec. to sec. ref.** This section is referred to in § 25-234.

**25-3202. License requirement.** — No person shall engage in the business of collecting, disposing, or rendering of the bodies of dead animals or parts thereof without first obtaining a license for such purpose from the department. Application for license shall be made on forms provided by the department and shall be accompanied by a fee of \$25.00. On receipt of such application, the department shall inspect the premises in which the applicant proposes to conduct such business. No license shall be issued unless the department finds that the premises comply with the requirements thereof. If the department finds that the applicant's premises do not comply with the requirements of this section or with the rules of the department, it shall notify the applicant wherein the same fails to so comply. If within a reasonable time to be fixed by the department, but not more than 90 days thereafter, the specified defects are remedied, the department shall make a second inspection and proceed therewith as in the case of an original inspection. [1969, ch. 33, § 2, p. 57.]

**25-3203. Establishing standards for establishments prior to application for license.** — The license referred to in section 25-3202 shall be issued to an establishment only if the following requirements are met:

(a) A fee of \$25.00 for the issuance of a license shall be paid the state by the licensee, subject to renewal each year.

(b) All rendering establishments and establishments processing 4-D animals are to be constructed in such a manner as to protect the finished product and to prevent pollution of surrounding environment or creation of a nuisance to the public.

(c) All rendering material shall be transported to the rendering establishment in covered and leak-proof vehicles, such vehicles to be used for this purpose only and to be cleaned and disinfected after delivering each load.

(d) All rendering material shall be heated to a sufficient temperature for a sufficient length of time to destroy all pathogens, and processed under sanitary procedures that prohibit the recontamination of the product after cooking.

(e) The finished product shall be transported from the rendering establishment or the establishment processing 4-D animals in a clean vehicle in such a manner that will prevent contamination.



(f) Rendering establishments and establishments processing 4-D animals may be inspected periodically by an inspector who may procure samples for laboratory testing. [1969, ch. 33, § 3, p. 57.]

**25-3204. Revocation of licenses.** — A license may be revoked if requested by the operator of a licensed establishment or if in the opinion of the licensing authority, the establishment fails to meet the sanitation or bacteriological standards required to effectuate the purposes of this act. [1969, ch. 33, § 4, p. 57.]

**Compiler's notes.** For words "this act" see  
Compiler's notes, § 25-3201.

**25-3205. Prohibiting unfinished products from intrastate shipment.** — Only finished products from licensed rendering establishments or licensed establishments processing 4-D animals will be allowed to move intrastate. [1969, ch. 33, § 5, p. 57.]

**25-3206. Enforcement of regulations.** — The department is hereby authorized and empowered to promulgate and enforce such regulations as it may deem necessary to carry out the purposes of this act. [1969, ch. 33, § 6, p. 57.]

**Compiler's notes.** For words "this act" see  
Compiler's notes, § 25-3201.

**25-3207. Restraining order authorized.** — The director of the department of agriculture is hereby authorized to issue orders to restrain the operation of any rendering or disposal plant or establishment engaged in the collection of, handling of, or transportation of rendering materials or finished products where such operation is carried on in violation of the laws of the state of Idaho or the rules, regulations or orders made thereunder. Restraining orders will be issued after notice and hearing, except that restraining orders may be issued without notice of hearing where in the opinion of the director the violation constitutes a menace to public health requiring immediate and summary abatement and he so finds in writing. Licensees shall have the right to appeal from restraining orders to the appropriate district court within twenty (20) days after service of the restraining order whether such order be made upon hearing or summarily. Execution of a restraining order may be stayed on appeal except when such restraining order is issued to restrain a menace to public health requiring immediate and summary abatement. [1969, ch. 33, § 7, p. 57; am. 1974, ch. 18, § 172, p. 364.]

**Compiler's notes.** Sections 171 and 173 of S.L. 1974, ch. 18 are compiled as §§ 25-3006 and 37-1520, respectively.

Section 263 of S.L. 1974, ch. 18 provided the act should take effect on and after July 1, 1974.

**25-3208. Exemptions.** — Animal rendering and processing facilities within establishments licensed under Idaho or federal meat inspection laws shall be exempt from the licensing provisions of this act but shall otherwise comply with it. [1969, ch. 33, § 8, p. 57.]

**Compiler's notes.** For words "this act" see Compiler's notes, § 25-3201.

## CHAPTER 33

### IDAHO LIVESTOCK DEALER LICENSING

#### SECTION.

- 25-3301. Definitions.
- 25-3302. State brand board — Additional duties.
- 25-3302A. Authorization for records review.
- 25-3303. License required.
- 25-3304. License revocation or suspension.
- 25-3305. [Repealed.]

#### SECTION.

- 25-3306. Prohibited acts.
- 25-3307. [Repealed.]
- 25-3308. Injunction.
- 25-3309. Penalty.
- 25-3310. Bond required of a license holder.
- 25-3311. Livestock dealer — Transactions of agent or representative.

**25-3301. Definitions.** — As used in this chapter, the following terms have the following meanings:

(1) "Board" means the state brand board created in chapter 11, title 25, Idaho Code.

(2) "Bond equivalent" means a letter of credit or trust fund agreement that complies with the packers and stockyards act of 1921, as amended, and regulations promulgated thereunder.

(3) "Livestock" means cattle, swine, bison, horses, mules, or asses.

(4) "Livestock dealer" means any person who buys, receives or assembles livestock for his own account for resale within twenty (20) days from the date of purchase, or for the account of another person. This term also includes both a person who pays and a person who does not pay the owner or auction market the full purchase price at the time of taking possession of the livestock.

(5) "Person" means an individual, partnership, corporation, broker, order buyer, video livestock sale or other type of electronic marketing organization, association or other legal entity.

(6) "Representative of a licensee" means any full-time employee, agent or other person who buys, receives, sells, or assembles livestock for resale on behalf of a licensed livestock dealer. [I.C., § 25-3301, as added by 1978, ch. 290, § 1, p. 710; am. 1990, ch. 182, § 1, p. 395; am. 1992, ch. 65, § 2, p. 198.]

**Compiler's notes.** The Packers and Stockyards Act of 1921, referred to in this section, is compiled as 7 U.S.C. §§ 181-183, 191-195,

201-217, 221-228, 229.

Section 1 of S.L. 1992, ch. 65 is compiled as § 25-1172.

**25-3302. State brand board — Additional duties.** — The state brand board, in addition to other duties provided by law, shall administer the provisions of this chapter relating to livestock dealer licensing. The board shall meet annually, and more frequently if deemed necessary, for the purposes of administration of this chapter.



The board shall exercise the following powers and duties:

- (1) Promulgate such rules as deemed necessary to implement and supplement the provisions of this chapter and provide for its orderly administration, pursuant to the provisions of chapter 52, title 67, Idaho Code;
- (2) Prescribe necessary information to be provided by applicants for licenses to determine if the requirements of this chapter have been met;
- (3) Issue licenses to qualified applicants and collect appropriate fees;
- (4) Revoke or suspend the license of, or refuse to issue a license to any person, licensee or applicant who violates any provision of this chapter; and
- (5) Require the necessary record keeping by licensees and submission of written reports as warranted in order to carry out the provision and intent of this chapter. [I.C., § 25-3302, as added by 1978, ch. 290, § 1, p. 710; am. 1990, ch. 182, § 2, p. 395; am. 1995, ch. 124, § 1, p. 540.]

**Compiler's notes.** Section 2 of S.L. 1995, ch. 124 declared an emergency. Approved March 14, 1995.

**25-3302A. Authorization for records review.** — Any employee of the board or any representative of the bureau of animal health of the Idaho department of agriculture is authorized to review, during normal business hours, the records and transactions of a licensee or representative of a licensee. [I.C., § 25-3302A, as added by 1990, ch. 182, § 3, p. 395.]

**25-3303. License required.** — Any person doing business as a livestock dealer in the state of Idaho must secure an annual license from the board. A fee of forty dollars (\$40.00) shall accompany any such application for initial issuance or renewal. In addition, a fee of fifteen dollars (\$15.00) shall be paid for each authorized representative of a licensee. Such fees so received are not returnable and shall be deposited in the state brand account created in section 25-1161, Idaho Code. Upon determination that the applicant is qualified, the board shall issue a license to the applicant and all annual licenses shall terminate and become void each successive June 30th. [I.C., § 25-3303, as added by 1978, ch. 290, § 1, p. 710; am. 1990, ch. 182, § 4, p. 395.]

**25-3304. License revocation or suspension.** — In the event the board has reason to believe a licensee is guilty of violating any of the provisions of this chapter, including the rules and regulations promulgated hereunder, the board shall conduct a hearing to determine if the license shall be suspended or revoked. Hearings conducted pursuant to this section shall comply with the provisions governing contested cases, chapter 52, title 67, Idaho Code.

Following the hearing, the board may (1) permanently revoke the license, (2) temporarily suspend the license, (or) (3) suspend the license for a definite time period, or (4) impose on the individual operating without a license or violating any other provision of this chapter a civil penalty of one hundred dollars (\$100) per day. [I.C., § 25-3304, as added by 1978, ch. 290, § 1, p. 710; am. 1990, ch. 182, § 5, p. 395.]



**Compiler's notes.** The word "or" in the second paragraph of this section was placed in parentheses by the compiler as surplusage.

### **25-3305. Livestock dealers licensing account [Repealed.]**

**Compiler's notes.** This section, which ch. 290, § 1, p. 710, was repealed by S.L. 1990, ch. 182, § 6. comprised I.C. § 25-3305, as added by 1978,

#### **25-3306. Prohibited acts.** — The following actions are prohibited:

(1) Acting as a livestock dealer without an adequate surety bond or bond equivalent and a valid license issued by the board;

(2) Failure to maintain records as required by the board, especially the names and addresses of sellers and buyers of livestock;

(3) Failure to provide access to all records required of such licensee by the board;

(4) Buying or selling livestock under an assumed name or address. All livestock sales shall be evidenced by a written bona fide name and address of buyer and seller;

(5) Violation of any valid rule, regulation or statute governing livestock disease control; and

(6) Operating as a livestock dealer in the state of Idaho while suspended or revoked from acting as a livestock dealer by the United States pursuant to the packers and stockyards act of 1921, as amended. [I.C., § 25-3306, as added by 1978, ch. 290, § 1, p. 710; am. 1990, ch. 182, § 7, p. 395; am. 1996, ch. 88, § 1, p. 268.]

**Compiler's notes.** The Packers and Stockyards Act of 1912 referred to in subsection (6) of this section is compiled as 7 U.S.C., § 181 — 183, 101 — 195, 201 — 203, 205 — 218d, 221 — 229.

Section 8 of S.L. 1990, ch. 182 repealed § 25-3307, and § 9 of S.L. 1990, ch. 182 is compiled as § 25-3309.

Section 2 of S.L. 1996, ch. 88 is compiled as § 25-3310.

### **25-3307. Exemptions [Repealed.]**

**Compiler's notes.** This section, which ch. 290, § 1, p. 710, was repealed by S.L. 1990, ch. 182, § 8. comprised I.C., § 25-3307, as added by 1978,

**25-3308. Injunction.** — The board, on determining that any person may have violated any provision of this chapter, may petition for injunctive relief from further violation. Such petition shall be addressed to the district court in the county in which the offense occurred or in which the offender has his principal place of business or is doing business or resides. The district court, on determining that probable cause of a violation of this chapter exists, shall issue appropriate injunctive relief. [I.C., § 25-3308, as added by 1978, ch. 290, § 1, p. 710.]

**25-3309. Penalty.** — To operate as a livestock dealer without a valid license, or otherwise violate the provisions of this chapter, shall be a misdemeanor punishable by a fine of not less than one hundred dollars (\$100) nor more than five thousand dollars (\$5,000). [I.C., § 25-3309, as added by 1978, ch. 290, § 1, p. 710; am. 1990, ch. 182, § 9, p. 395.]

**Compiler's notes.** Section 7 of S.L. 1990, ch. 182 is compiled as § 25-3306, and § 8 of S.L. 1990, ch. 182 repealed § 25-3307.

**25-3310. Bond required of a license holder.** — (1) Each applicant to whom a license to act as a livestock dealer is issued shall:

- (a) File a bond of a surety company authorized to do business in this state; or
- (b) File a copy of the bond or bond equivalent required by the United States under the provisions of the packers and stockyards act of 1921, as amended, and regulations promulgated thereunder; or
- (c) Approve the application by a person declaring to be a representative of the licensee by signature and include such representative under the bond or bond equivalent required pursuant to this section. The bond shall include the provisions required by the regulations promulgated pursuant to the packers and stockyards act of 1921, as amended, 9 C.F.R., part 201, section 201.31(c), known as condition clause 3.

(2) The amount of the bond must be based on the applicant's annual volume of purchases, including purchases made by a representative of the licensee, according to a schedule adopted by the board; provided, however, that the bond shall be not less than ten thousand dollars (\$10,000) nor more than one hundred thousand dollars (\$100,000).

(3) All bonds must be renewed or continued in force to cover dealer transactions during the period that the license is valid. [I.C., § 25-3310, as added by 1990, ch. 182, § 10, p. 395; am. 1996, ch. 88, § 2, p. 268.]

**Compiler's notes.** The Packers and Stockyards Act of 1921, referred to in this section, is compiled as 7 U.S.C. §§ 181-183, 191-195, 201-217, 221-228, 229.

Section 12 of S.L. 1990, ch. 182 provided

that the act should take effect on and after July 1, 1991.

Section 1 of S.L. 1996, ch. 88 is compiled as § 25-3306.

**25-3311. Livestock dealer — Transactions of agent or representative.** — A livestock dealer shall be responsible for any livestock transaction conducted by his agent or representative, if the nature of that transaction would otherwise require a livestock dealer's license. [I.C., § 25-3311, as added by 1997, ch. 91, § 1, p. 217.]

## CHAPTER 34

### PORK PROMOTION ASSESSMENT ACT

#### SECTION.

- 25-3401. Short title.
- 25-3402. Declaration of purpose.
- 25-3403. Definitions.
- 25-3404. Referendum.

#### SECTION.

- 25-3405. Payment and collection of assessment.
- 25-3406. Use of assessments.
- 25-3407. Termination of assessment.

**25-3401. Short title.** — This chapter shall be known as the "Pork Promotion Assessment Act." [I.C., § 25-3401, as added by 1992, ch. 260, § 1, p. 752.]

**25-3402. Declaration of purpose.** — It is in the public interest for the state to enable producers of porcine animals to assess themselves in order to raise funds to promote the interests of the pork industry and to control porcine diseases. [I.C., § 25-3402, as added by 1992, ch. 260, § 1, p. 752.]

**25-3403. Definitions.** — In this chapter:

(1) “Association” means the Idaho pork producers association, inc., an Idaho nonprofit corporation.

(2) “Buyer” means any person who buys, receives or assembles swine for his own account, or for the account of another person for feeding, breeding, slaughter or any other purpose.

(3) “Department” means the Idaho department of agriculture.

(4) “Market” means to sell, barter, exchange, slaughter for sale or otherwise dispose of a porcine animal in commerce.

(5) “Person” means an individual, a partnership, a corporation, a firm, an agency or other business unit.

(6) “Porcine animal” means all breeds of domestic porcine and all wild and exotic porcine.

(7) “Pork producer” means a person who owns, manages or has a financial interest in production of porcine animals in the state of Idaho. [I.C., § 25-3403, as added by 1992, ch. 260, § 1, p. 752.]

**25-3404. Referendum.** — (1) The association may conduct among pork producers a referendum upon the question of whether an assessment shall be levied on porcine animals sold in this state.

(2) The association shall determine:

(a) The amount of the proposed assessment.

(b) The time and place of the referendum.

(c) Procedures for conducting the referendum and counting of votes.

(d) Any other matters pertaining to the referendum.

(3) The amount of the proposed assessment shall be stated on the referendum ballot. The amount shall not exceed thirty cents (30¢) for each porcine animal marketed in this state. If the assessment is approved in the referendum, the association may set the assessment at an amount equal to or less than the amount stated on the ballot. If the association sets a lower amount than the amount approved by referendum, it may increase the amount annually without a referendum by no more than two cents (2¢) for each porcine animal. The increased rate may not exceed the amount approved by referendum and may not exceed the maximum allowable rate of thirty cents (30¢) for each porcine animal.

(4) Each producer, whether an individual, a partnership, a corporation, a firm, an agency or other business unit, shall have one (1) vote at such referendum. Any dispute over eligibility to vote or any other matter relating to the referendum shall be determined by the association. The association shall make reasonable efforts to provide pork producers with notice of the referendum and an opportunity to vote.

(5) The association shall be reimbursed for the costs of the referendum by moneys derived from the assessment. [I.C., § 25-3404, as added by 1992, ch. 260, § 1, p. 752.]



**25-3405. Payment and collection of assessment.** — (1) The assessment shall not be collected unless more than one-half ( $\frac{1}{2}$ ) of the votes cast in the referendum are in favor of the assessment. If more than one-half ( $\frac{1}{2}$ ) of the votes cast in the referendum are in favor of the assessment, then the association shall notify the department of the amount of the assessment and the effective date of the assessment. The department shall notify all buyers and pork producers of the assessment.

(2) Each pork producer shall pay an assessment on each porcine animal sold to a buyer.

(3) A buyer of a porcine animal shall collect the assessment when buying a porcine animal by deducting the assessment from the price paid for the animal. The buyer shall remit collected assessments to the department no later than the tenth day of the following month. The department shall provide forms to buyers for reporting the assessment. If the total assessments collected by a buyer in a month are less than twenty-five dollars (\$25.00), the buyer may keep the assessments until the total amount due is at least twenty-five dollars (\$25.00) or the end of the quarter, whichever comes first. All buyers shall file at least one (1) report in each calendar quarter, regardless of the amount due.

(4) A buyer of porcine animals shall keep records of the number of porcine animals purchased and the date purchased. Records shall be maintained for two (2) years and be available for inspection and reproduction by the department at all reasonable times. All financial information or records regarding purchases of porcine animals by individual buyers shall be kept confidential by employees or agents of the department and the association, and shall not be disclosed except by court order.

(5) A pork producer, who sells directly to an out-of-state buyer, shall pay the assessment. The producer shall remit assessments to the department no later than the tenth day of the month following the date of sale. The department shall provide forms to producers for reporting and remitting the assessment. If the total assessments owed by a producer in a month are less than twenty-five dollars (\$25.00), the producer may accumulate the assessments until the total amount due is at least twenty-five dollars (\$25.00) or the end of the quarter, whichever comes first. All producers shall file at least one (1) report in each calendar quarter, regardless of the amount due.

(6) A producer shall keep records of the number of porcine animals sold, the market sold to and the date of sale. Records shall be maintained for two (2) years and be available for inspection and reproduction by the department at all reasonable times. All financial information or records regarding sale of porcine animals to out-of-state markets by producers shall be kept confidential by employees or agents of the department and the association, and shall not be disclosed except by court order.

(7) The association may bring an action to recover any unpaid assessments, plus the reasonable costs, including attorney fees, incurred in the action. [I.C., § 25-3405, as added by 1992, ch. 260, § 1, p. 752.]

**25-3406. Use of assessments.** — The funds collected under this assessment shall be used to promote the interests of the pork industry and to

conduct a porcine disease control program. The department shall remit all funds collected under this act to the association at least monthly. The association shall return to the department at least monthly those funds necessary to conduct a porcine disease control program. In order to prevent duplication of effort, these funds shall not be used for activities funded under 7 U.S.C. chapter 79, pork promotion, research and consumer information. [I.C., § 25-3406, as added by 1992, ch. 260, § 1, p. 752.]

**Compiler's notes.** The words "this act" refer to S.L. 1992, ch. 260, § 1, p. 752 compiled as §§ 25-3401 — 25-3407.

**25-3407. Termination of assessment.** — Upon receipt of a petition signed by at least ten percent (10%) of the pork producers in Idaho known to the association, the department shall notify the association and the association shall, within six (6) months, conduct a referendum upon the question of continuing the assessment. If a majority of the votes cast in the referendum are against continuing the assessment or if the association fails to conduct a referendum within the six (6) month period, the assessment expires at the end of the six (6) month period. If a majority of the votes cast in the referendum are in favor of continuing the assessment, then no subsequent referendum shall be held for at least three (3) years. [I.C., § 25-3407, as added by 1992, ch. 260, § 1, p. 752.]

**Compiler's notes.** Section 2 of S.L. 1992, ch. 260 declared an emergency. Approved April 8, 1992.

## CHAPTER 35

### CRUELTY TO ANIMALS

#### SECTION.

- 25-3501. Administration.
- 25-3502. Definitions.
- 25-3503. Poisoning animals.
- 25-3504. Committing cruelty to animals.
- 25-3505. Carrying in a cruel manner — Seizure, expenses, lien.
- 25-3506. Exhibition of cockfights.
- 25-3507. Exhibition of dogfights.
- 25-3508. [Repealed.]
- 25-3509. Arrests without warrants.
- 25-3510. Impounding without food or water.
- 25-3511. Permitting animals to go without care — Abandoned animals to be humanely destroyed.
- 25-3512. Abandonment of animals left with veterinarian.

#### SECTION.

- 25-3513. Prosecutions.
- 25-3514. Chapter construed not to interfere with normal or legal practices.
- 25-3514A. Immunity.
- 25-3515. Chapter construed not to interfere with game laws.
- 25-3516. High-altitude decompression chamber prohibited.
- 25-3517. [Repealed.]
- 25-3518. Beating and harassing animals.
- 25-3519. Authority to enter premises and examine animals.
- 25-3520. Authority to promulgate rules.
- 25-3520A. Penalty for violations.
- 25-3521. Severability.

**25-3501. Administration.** — The department of agriculture, division of animal industries shall be responsible for the administration of the provisions of this chapter and shall inform the public and animal owners concerning their legal responsibilities, and in cooperation with local law enforcement, investigate and develop cases for prosecution. The division



shall be authorized to call upon any peace officer in the state to aid in fulfillment of the requirements of this chapter and refer cases for prosecution to the appropriate authority. The foregoing shall not be construed to preclude county or local officials, acting upon their own authority, from investigating, developing cases and prosecuting violations of this chapter that occur in their jurisdiction. The cost to the department for administering the provisions of this chapter shall be borne by the citizens of this state through the appropriation of general funds for administration, personnel, travel, equipment and supplies. [I.C., § 25-3501, as added by 1994, ch. 346, § 2, p. 1089; am. 1996, ch. 229, § 1, p. 744.]

**Compiler's notes.** Two 1994 acts, chapters 72 and 73, purported to create a new Chapter 35 in Title 25. Chapter 72 has been compiled as Title 25, ch. [36] 35 (§§ [25-3601] 25-3501 — [25-3608] 25-3508) while Chapter 73 has been compiled as Title 25, ch. [37] 35 (§§ [25-

3701] 25-3501 — [25-3709] 25-3509). Additionally, S.L. 1994, ch. 346 enacted new sections in Title 25, Chapter 35 and amended and redesignated other sections from Title 18, Chapter 21, to Title 25, Chapter 35, which have been compiled as designated herein.

**25-3502. Definitions.** — The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

(1) "Abandon" means to completely forsake and desert an animal previously under the custody or possession of a person without making reasonable arrangements for its proper care, sustenance and shelter.

(2) "Animal" means any vertebrate member of the animal kingdom, except man.

(3) "Cruel" or "cruelty" shall mean any or all of the following:

(a) The intentional and malicious infliction of pain, physical suffering, injury or death upon an animal;

(b) To maliciously kill, maim, wound, overdrive, overload, drive when overloaded, overwork, torture, torment, deprive of necessary sustenance, drink or shelter, cruelly beat, mutilate or cruelly kill an animal;

(c) To subject an animal to needless suffering, inflict unnecessary cruelty, drive, ride or otherwise use an animal when same is unfit;

(d) To abandon an animal;

(e) To negligently confine an animal in unsanitary conditions or to negligently house an animal in inadequate facilities; to negligently fail to provide sustenance, water or shelter to an animal.

(4) "Custodian" means any person who keeps or harbors an animal, has an animal in his care or acts as caretaker of an animal.

(5) "Malicious" or "maliciously" means the intentional doing of a wrongful act without just cause or excuse, with an intent to inflict an injury or death.

(6) "Owner" means any person who has a right of property in an animal.

(7) "Person" means any individual, firm, corporation, partnership, other business unit, society, association or other legal entity, any public or private institution, the state of Idaho, or any municipal corporation or political subdivision of the state.

(8) "Pound" means a place enclosed by public authority for the detention of stray animals. [I.C., § 25-3502, as added by 1994, ch. 346, § 2, p. 1089; am. 1996, ch. 229, § 2, p. 744.]



**Compiler's notes.** Section 3 of S.L. 1996, ch. 229 is compiled as § 25-3504.

**25-3503. Poisoning animals.** — Every person who wilfully administers any poisonous substance to an animal, the property of another, or maliciously places any poisonous substance where it would be found by an animal or where it would attract an animal, with the intent that the same shall be taken, ingested or absorbed by any such animal, is punishable by imprisonment in the state prison not exceeding three (3) years, or in the county jail not exceeding one (1) year, and a fine not less than one hundred dollars (\$100) or more than five thousand dollars (\$5000). [I.C., § 18-2101, as added by 1972, ch. 336, § 1, p. 844; am. and redesiɡ. 1994, ch. 346, § 3, p. 1089.]

**Compiler's notes.** This section was formerly compiled as § 18-2101.

Section 14 of S.L. 1972, ch. 336 declared an emergency and provided that the act should take effect on and after April 1, 1972.

**Cross ref.** See subdivisions "animals" and "livestock" in cross reference table to penal provisions in other volumes at the end of this volume.

#### ANALYSIS

Evidence.  
Information or indictment.  
Intent.  
Motive.  
Sentence.

#### Evidence.

Admissions of one defendant are admissible in joint trial, to prove the guilt of such defendant, though made out of the presence of the other defendant. *State v. Farnsworth*, 51 Idaho 768, 10 P.2d 295 (1932).

#### Information or Indictment.

In prosecution for poisoning animals, each of several acts which might constitute an offense may be charged conjunctively in a single count. *State v. Farnsworth*, 51 Idaho 768, 10 P.2d 295 (1932).

In a prosecution for poisoning animals, that defendants did maliciously "administer and expose" poison is not duplicitous. *State v. Farnsworth*, 51 Idaho 768, 10 P.2d 295 (1932).

Indictment substantially in words of statute was sufficient notwithstanding offense was incorrectly designated as a misdemeanor instead of a felony. *State v. Farnsworth*, 51 Idaho 768, 10 P.2d 295 (1932).

#### Intent.

To constitute malice, it is not necessary that defendants know owner of animals. *State v. Farnsworth*, 51 Idaho 768, 10 P.2d 295 (1932).

#### Motive.

State does not need to prove that there was a motive or what the motive was. *State v. Farnsworth*, 51 Idaho 768, 10 P.2d 295 (1932).

#### Sentence.

Under this section, sentence is within the court's discretion, and in the absence of an abuse the appellate court will not interfere. *State v. Farnsworth*, 51 Idaho 768, 10 P.2d 295 (1932).

Sentencing one defendant to penitentiary for felony, and the other to county jail for misdemeanor, was not an abuse of discretion. *State v. Farnsworth*, 51 Idaho 768, 10 P.2d 295 (1932).

**Collateral References.** 4 Am. Jur. 2d, Animals, § 28 et seq.

3A C.J.S., Animals, § 99 et seq.

Liability for injury to trespassing stock from poisonous substances on the premises. 12 A.L.R.3d 1103.

Liability for injury caused by spraying or dusting of crops. 37 A.L.R.3d 833.

Liability of oil and gas lessee or operator for injuries to or death of livestock. 51 A.L.R.3d 304.

Products liability: fertilizers, insecticides, pesticides, fungicides, weedkillers, and the like, or articles used in application thereof. 12 A.L.R.4th 462.

Products liability: animal feed or medicines. 29 A.L.R.4th 1045.

**25-3504. Committing cruelty to animals.** — Every person who is cruel to any animal, or causes or procures any animal to be cruelly treated; and whoever, having the charge or custody of any animal, either as owner or otherwise, subjects any animal to cruelty, is, for every such offense, guilty of a misdemeanor and shall, upon conviction, be punished in accordance with

section 25-3520A, Idaho Code. [I.C., § 18-2102, as added by 1972, ch. 336, § 1, p. 844; am. 1979, ch. 183, § 1, p. 537; am. and redesisg. 1994, ch. 346, § 4, p. 1089; am. 1996, ch. 229, § 3, p. 744.]

**Compiler's notes.** This section was formerly compiled as § 18-2102.

Section 2 of S.L. 1996, ch. 229 is compiled as § 25-3502.

**Cross ref.** Penalty for misdemeanor when not otherwise provided, § 18-113.

**Sec. to sec. ref.** This section is referred to in § 25-3513.

#### ANALYSIS

Malice.

Sentence.

#### Malice.

In prosecution under this section, for the malicious killing, maiming, or wounding of a dog, malice is gist of action, and must be established to the satisfaction of jury beyond a reasonable doubt, in order to justify conviction. *State v. Churchill*, 15 Idaho 645, 98 P. 853, 19 L.R.A. (n.s.) 835, 16 Ann. Cas. 947 (1909).

The offense of maliciously killing an animal is not an ingredient of the crime of calf stealing. *State v. Craner*, 60 Idaho 620, 94 P.2d 1081 (1939).

#### Sentence.

Defendant intentionally committed the act

of shoving the barrel of a gun up the nose of a dog he happened to find, and firing it; therefore, the sentence, a six-month jail term with work release, was not an abuse of sentencing discretion. *State v. Joy*, 120 Idaho 690, 819 P.2d 108 (Ct. App. 1991).

**Collateral References.** "Infamous offense," cruelty to animals as, within constitutional or statutory provision in relation to presentment or indictment by grand jury. 24 A.L.R. 1009.

Constitutionality of statute to prevent cruelty in trapping animals. 79 A.L.R. 1308.

Pestered animals, agister's liability for injury, weight loss, or death of. 94 A.L.R.2d 319.

Personal liability of public officer for killing or injuring animal while carrying out statutory duties with respect to it. 2 A.L.R.3d 822.

Liability of oil and gas lessee or operator for injuries to or death of livestock. 51 A.L.R.3d 304.

Liability for injury or damage caused by bees. 86 A.L.R.3d 829.

Liability for killing or injuring, by motor vehicle, livestock or fowl on highway. 55 A.L.R.4th 822.

What constitutes offense of cruelty to animals — modern cases. 6 A.L.R.5th 733.

**25-3505. Carrying in a cruel manner — Seizure, expenses, lien. —** Whoever carries or causes to be carried in or upon any vehicle or otherwise any animal in a cruel manner, or knowingly and wilfully authorizes or permits it to be subjected to cruelty of any kind, is guilty of a misdemeanor and shall, upon conviction, be punished in accordance with section 25-3520A, Idaho Code. Whenever any such person is taken into custody therefor by any officer, such officer must take charge of such vehicle, and its contents, together with the animal and deposit them in some place of custody. Any necessary expense incurred for taking care of and keeping the same, is a lien thereon, to be paid before the same can be lawfully recovered; and if such expense, or any part thereof remains unpaid, it may be recovered, by the person incurring the same, from the owner of such animal, in an action therefor. [I.C., § 18-2103, as added by 1972, ch. 336, § 1, p. 844; am. and redesisg. 1994, ch. 346, § 5, p. 1089; am. 1996, ch. 229, § 4, p. 744.]

**Compiler's notes.** This section was formerly compiled as § 18-2103.

**Cross ref.** Penalty for misdemeanor when not otherwise provided, § 18-113.

**25-3506. Exhibition of cockfights. —** Every person who participates in a public or private display of combat between two (2) or more gamecocks in which the fighting, killing, maiming or injuring of gamecocks is a significant feature is guilty of a misdemeanor and shall, upon conviction, be



punished in accordance with section 25-3520A, Idaho Code. Nothing in this section prohibits any customary practice of breeding or rearing game fowl, regardless of the subsequent uses of said game fowl. [I.C., § 18-2104, as added by 1972, ch. 336, § 1, p. 844; am. and redesign. 1994, ch. 346, § 6, p. 1089; am. 1996, ch. 229, § 5, p. 744.]

**Compiler's notes.** This section was formerly compiled as § 18-2104.

**Cross ref.** Penalty for misdemeanor when not otherwise provided, § 18-113.

**25-3507. Exhibition of dogfights.** — Every person who participates in a public or private display of combat between two (2) or more dogs in which the fighting, killing, maiming or injuring of dogs is a significant feature is guilty of a misdemeanor and shall, upon conviction, be punished in accordance with section 25-3520A, Idaho Code. Nothing in this section prohibits demonstrations of the hunting, herding, working or tracking skills of dogs or the lawful use of dogs for hunting, herding, working, tracking or self and property protection. [I.C., § 18-2105, as added by 1972, ch. 336, § 1, p. 844; am. and redesign. 1994, ch. 346, § 7, p. 1089; am. 1996, ch. 229, § 6, p. 744.]

**Compiler's notes.** This section was formerly compiled as § 18-2105.

**Cross ref.** Penalty for misdemeanor when not otherwise provided, § 18-113.

## **25-3508. Dog or cock fights. [Repealed.]**

**Compiler's notes.** This section, which comprised I.C., § 18-2106, as added by 1972, ch. 336, § 1, p. 844; am. and redesign. 1994, ch.

346, § 8, p. 1089, was repealed by S.L. 1996, ch. 229, § 7 effective July 1, 1996.

**25-3509. Arrests without warrants.** — Any sheriff, constable, police or peace officer, qualified under the provisions of law to make arrests may enter any place, building or tenement where there is an exhibition of the fighting of birds or animals or where preparations are being made for such an exhibition, and without a warrant, arrest all persons there present. [I.C., § 18-2107, as added by 1972, ch. 336, § 1, p. 844; am. and redesign. 1994, ch. 346, § 9, p. 1089.]

**Compiler's notes.** This section was formerly compiled as § 18-2107.

**Collateral References.** Peace officer's delight in making arrest without a warrant for misdemeanor or breach of peace. 58 A.L.R.2d 1056.

Police officer's power to enter private house or enclosure to make arrest, without a warrant, for suspected misdemeanor. 76 A.L.R.2d 1432.

**25-3510. Impounding without food or water.** — Any person who impounds, or causes to be impounded in any pound, any animal, must supply the same during such confinement with a sufficient quantity of wholesome food and clean water, and in default thereof, is guilty of a misdemeanor and shall, upon conviction, be punished in accordance with section 25-3520A, Idaho Code. [I.C., § 18-2108, as added by 1972, ch. 336, § 1, p. 844; am. and redesign. 1994, ch. 346, § 10, p. 1089; am. 1996, ch. 229, § 8, p. 744.]



**Compiler's notes.** This section was formerly compiled as § 18-2108.

Section 7 of S.L. 1996, ch. 229 contained a

repeal and § 6 is compiled as § 25-3507.

**Cross ref.** Penalty for misdemeanor when not otherwise provided, § 18-113.

**25-3511. Permitting animals to go without care — Abandoned animals to be humanely destroyed.** — Every owner, custodian or possessor of any animal, who shall permit the same to be in any building, inclosure, lane, street, square or lot of any city, county or precinct, without proper care and attention, as determined by an Idaho licensed veterinarian, or a representative of the division, shall, on conviction, be deemed guilty of a misdemeanor and shall, upon conviction, be punished in accordance with section 25-3520A, Idaho Code. And it shall be the duty of any peace officer, or officer of any incorporated association qualified as provided by law, to take possession of the animal so abandoned or neglected, and care for the same until it is redeemed by the owner or claimant, and the cost of caring for such animal shall be a lien on the same until the charges are paid. Every sick, disabled, infirm or crippled animal which shall be abandoned in any city, county or precinct, may if after due search no owner can be found therefor, be humanely destroyed, or other provision made for the animal by or on the order of such officer; and it shall be the duty of all peace officers, or by an officer of said incorporated association, to cause the same to be humanely destroyed, or other provision made therefor, on information of such abandonment. Such officer may likewise take charge of any animal that by reason of lameness, sickness, feebleness or neglect, is unfit for the activity it is performing, or that in any other manner is being cruelly treated; and, if such animal is not then in custody of its owner, such officer shall give notice thereof to such owner, if known, and may provide suitable care for such animal until it is deemed to be in a suitable condition, as determined by an Idaho licensed veterinarian or a representative of the division, to be delivered to such owner, and any necessary expenses which may be incurred for taking care of and keeping the same shall be a lien thereon, to be paid before the same can be lawfully recovered. If, after due process under this section, a responsible owner cannot be found, the animal may be offered for adoption to a responsible person in lieu of destruction. [I.C., § 18-2109, as added by 1972, ch. 336, § 1, p. 844; am. 1994, ch. 131, § 9, p. 296; am. and redesig. 1994, ch. 346, § 11, p. 1089; am. 1996, ch. 229, § 9, p. 744.]

**Compiler's notes.** This section was formerly compiled as § 18-2109.

Sections 8 and 10 of S.L. 1994, ch. 131 are compiled as §§ 18-1801 and 18-2111, respectively.

Section 10 of S.L. 1996, ch. 229 is compiled as § 25-3513.

**Cross ref.** Penalty for misdemeanor when not otherwise provided, § 18-113.

#### ANALYSIS

Constitutionality.

Evidence.

Information or indictment.

Proper care.

Stability of enclosure.

#### Constitutionality.

This statute was enacted to prevent malicious injury and cruelty to animals and should not be held to be so indefinite as to render it unconstitutional for the reason that it is susceptible of different constructions. *State v. Groseclose*, 67 Idaho 71, 171 P.2d 863 (1946).

#### Evidence.

In a prosecution of defendant for placing two mares in an enclosure and not properly

caring for them, evidence of other prior similar incidents tended to show that the defendant knew the small pasture would not provide sufficient feed for the number of animals that were kept there, and was therefore admissible. *State v. Flynn*, 107 Idaho 206, 687 P.2d 596 (Ct. App. 1984).

#### **Information or Indictment.**

Where accused was charged in complaint with permitting cattle to be at large in lane, street, square or lot in the vicinity of unincorporated village without proper care and attention contrary to statute, the complaint was subject to demurrer for failure to allege facts necessary to constitute commission of offense. *State v. Groseclose*, 67 Idaho 71, 171 P.2d 863 (1946).

#### **Proper Care.**

The term "proper care" as used in this

section means that degree of care which a prudent man would use under like circumstances and charged with a like duty. *State v. Groseclose*, 67 Idaho 71, 171 P.2d 863 (1946).

#### **Stability of Enclosure.**

Where the defendant was convicted on two charges for placing horses in an enclosure and allowing them to go without proper food, the defendant's conviction under this section was no less valid simply because he made escape easier by penning the hungry animals with a decrepit fence; under this section the State is not required to prove that the animals were enclosed by a "lawful fence" as defined by §§ 35-101 and 35-102. *State v. Flynn*, 107 Idaho 206, 687 P.2d 596 (Ct. App. 1984).

### **25-3512. Abandonment of animals left with veterinarian. —**

(1) Any animal placed in the custody of a veterinarian licensed under the provisions of chapter 21, title 54, Idaho Code, for treatment, boarding or other care, and which is unclaimed by its owner or the agent of the owner for a period of more than ten (10) days after written notice by certified mail, return receipt requested, is given to the addressee only at his last known address, shall be deemed to be abandoned and may be turned over to the nearest pound or to a peace officer, or disposed of as such custodian may deem proper.

(2) The giving of notice to the owner, or the agent of the owner, of such animal by the licensed veterinarian, as provided in subsection (1) of this section, shall relieve the licensed veterinarian and any custodian to whom such animal may be given of any further liability for disposal. Such procedure by the licensed veterinarian shall not constitute grounds for discipline under the provisions of chapter 21, title 54, Idaho Code.

(3) For the purposes of this section, the term "abandoned" means to forsake entirely, or to neglect or refuse to provide or perform the legal obligations for treatment, care and support of an animal by its owner, or the agent of the owner. Such abandonment shall constitute the relinquishment of all rights and claims by the owner to such animal. [I.C., § 18-2110, as added by 1982, ch. 41, § 1, p. 67; am. and redesign. 1994, ch. 346, § 12, p. 1089.]

**Compiler's notes.** This section was formerly compiled as § 18-2110.

**25-3513. Prosecutions. —** When complaint is made on oath, to any magistrate authorized to issue warrants in criminal cases, that there is probable cause to believe that any provision of law relating to or in any way affecting animals, is being, or is about to be violated in any particular building or place, such magistrate must issue and deliver immediately a warrant directed to any sheriff, police or peace officer, or animal control



officer, authorizing him to enter and search such building or place, and to arrest any person there present violating or attempting to violate any law relating thereto, or in any way affecting animals and to bring such person before some court or magistrate of competent jurisdiction, within the city or county within which such offense has been committed or attempted, to be dealt with according to law, and such attempt must be held to be a misdemeanor and persons so convicted shall be punished in accordance with section 25-3520A, Idaho Code. [I.C., § 18-2111, as added by 1972, ch. 336, § 1, p. 844; am. 1994, ch. 131, § 10, p. 296; am. and redesisg. 1994, ch. 346, § 13, p. 1089; am. 1996, ch. 229, § 10, p. 744.]

**Compiler's notes.** This section was formerly compiled as § 18-2111.

Section 9 of S.L. 1994, ch. 131 is compiled as § 18-2109, which was amended and redesignated as § 25-3513.

Section 14 of S.L. 1994, ch. 346 contained a repeal.

Sections 9 and 11 of S.L. 1996, ch. 229 are compiled as §§ 25-3511 and 25-3514A, respectively.

**25-3514. Chapter construed not to interfere with normal or legal practices.** — No part of this chapter shall be construed as interfering with or allowing interference with:

- (1) Normal or accepted veterinary practices;
- (2) The humane slaughter of any animal normally and commonly raised as food or for production of fiber;
- (3) Bona fide experiments or research carried out by professionally recognized private or public research facilities or institutions;
- (4) The humane destruction of an animal which is diseased or disabled beyond recovery for any useful purpose, or the humane destruction of animals for population control;
- (5) Normal or accepted practices of animal identification and animal husbandry;
- (6) The killing of any animal, by any person at any time, which may be found outside of the owned or rented property of the owner or custodian of such animal and which is found injuring or posing a threat to any person, farm animal or property;
- (7) The killing of an animal that is vicious by an animal control officer, law enforcement officer or veterinarian;
- (8) The killing or destruction of predatory animals, vermin or other animals or birds which are injuring or posing a threat to farm or privately owned animals or property, when such killing or destruction is conducted in accordance with laws and rules covering such animals;
- (9) Any other exhibitions, competitions, activities, practices or procedures normally or commonly considered acceptable. The practices, procedures and activities described in this section shall not be construed to be cruel nor shall they be defined as cruelty to animals, nor shall any person engaged in these practices, procedures or activities be charged with cruelty to animals. [I.C., § 25-3514, as added by 1994, ch. 346, § 15, p. 1089.]

**Compiler's notes.** Section 14 of S.L. 1994, ch. 346 contained a repeal.

**Sec. to sec. ref.** This section is referred to in § 54-2115.



**25-3514A. Immunity.** — Any Idaho licensed veterinarian shall be held harmless from either criminal or civil liability for any decisions made or services rendered under the provisions of this chapter. Such a veterinarian is, therefore, protected from a lawsuit for his part in an investigation of cruelty to animals. Provided however, that a veterinarian who participates or reports in bad faith or with malice shall not be protected under the provisions of this section. [I.C., § 25-3514A, as added by 1996, ch. 229, § 11, p. 744.]

**Compiler's notes.** Sections 10 and 12 of S.L. 1996, ch. 229 are compiled as §§ 25-3513 and 25-3516, respectively.

**25-3515. Chapter construed not to interfere with game laws.** — No part of this chapter shall be construed as interfering with, negating or preempting any of the laws or rules of the department of fish and game of this state or any law for or against the destruction of certain birds, nor must this chapter be construed as interfering with the right to destroy any venomous reptile, or animal known as dangerous to life, limb, or property, or to interfere with the right to kill, slaughter, bag or take all animals used for food or with properly conducted scientific experiments or investigations performed under the authority of the faculty of a regularly incorporated medical college, or university of this state, or any other recognized research facility or institution. [I.C., § 18-2113, as added by 1972, ch. 336, § 1, p. 844; am. and redesisg. 1994, ch. 346, § 16, p. 1089.]

**Compiler's notes.** This section was formerly compiled as § 18-2113. of statute to prevent cruelty in trapping animals. 79 A.L.R. 1308.

**Collateral References.** Constitutionality

**25-3516. High-altitude decompression chamber prohibited.** — No person, peace officer, officer of a humane society, or officer of a pound, or any public agency shall kill any dog or cat by the use of any high-altitude decompression chamber. Every person who violates the provisions of this section is guilty of a misdemeanor and shall, upon conviction, be punished in accordance with section 25-3520A, Idaho Code. [I.C., § 18-2114, as added by 1979, ch. 300, § 1, p. 819; am. and redesisg. 1994, ch. 346, § 17, p. 1089; am. 1996, ch. 229, § 12, p. 744.]

**Compiler's notes.** This section was formerly compiled as § 18-2114. compiled as §§ 25-3514A and 25-3518, respectively.

Sections 11 and 13 of S.L. 1996, ch. 229 are

**25-3517. Animals to be humanely destroyed when unfit for work.**  
[Repealed.]

**Compiler's notes.** Former § 18-2115, which comprised I.C., § 18-2115, as added by 1972, ch. 336, § 1, p. 844, was repealed by S.L. 1994, ch. 131, § 12, effective July 1, 1994 and was amended and redesignated by S.L. 1994, ch. 346, § 18, effective July 1, 1994. This section as amended and redesignated by S.L. 1994, ch. 346, § 18 read: "**Animals to be humanely destroyed when unfit for work.** — Every animal which is unfit, by reason of its physical condition, for the purpose for which such animals are usually em-

ployed, and when there is no reasonable probability of such animal ever becoming fit for the purpose for which it is usually employed, shall be by the owner or lawful possessor of the same, deprived of life within twelve (12) hours after being notified by a representative of the division or any peace officer to humanely destroy the same, and such owner, possessor, or person omitting or refusing to comply with the provisions of this section shall, upon conviction, be guilty of a misde-

meanor, and after such conviction, the court or magistrate having jurisdiction of such offense shall order any peace officer, or officer of said incorporated association, to immediately humanely destroy such animal: provided, that this shall not apply to such owner keeping any old or diseased animal belonging to him on his own premises with proper care."

This section was formerly compiled as § 18-2115.

**25-3518. Beating and harassing animals.** — Every person who cruelly whips, beats or otherwise maliciously treats any animal, or maliciously harasses with a dog any cattle, horses, sheep, hogs or other livestock shall be guilty of a misdemeanor and shall, upon conviction, be punished in accordance with section 25-3520A, Idaho Code. [I.C., § 18-2116, as added by 1972, ch. 336, § 1, p. 844; am. and redesign. 1994, ch. 346, § 19, p. 1089; am. 1996, ch. 229, § 13, p. 744.]

**Compiler's notes.** This section was formerly compiled as § 18-2116.

Sections 12 and 14 of S.L. 1996, ch. 229 are compiled as §§ 25-3516 and 25-3520A, respectively.

**Cross ref.** Penalty for misdemeanor when not otherwise provided, § 18-113.

**25-3519. Authority to enter premises and examine animals.** — Representatives of the division are authorized and empowered to enter any field, pasture, feedyard, barn, stable, kennel, cage, yard, vehicle, trailer or other premises in this state where animals are kept, during normal operating hours, when probable cause exists, with the permission of the owner, to investigate alleged violations of the provisions of this chapter. If permission is not granted, said representatives shall be empowered to call on sheriffs, constables and peace officers to assist them in the discharge of their duties and in carrying out the provisions of this chapter. [I.C., § 25-3519, as added by 1994, ch. 346, § 20, p. 1089.]

**25-3520. Authority to promulgate rules.** — The division shall be authorized and empowered to promulgate and enforce such rules, pursuant to chapter 52, title 67, Idaho Code, as it deems necessary for the administration and enforcement of the provisions of this chapter. [I.C., § 25-3520, as added by 1994, ch. 346, § 20, p. 1089.]

**25-3520A. Penalty for violations.** — (1) Except as provided in section 25-3503, Idaho Code, any person convicted for a first violation of any of the provisions of this chapter shall be punished, for each offense, by a jail sentence of not more than six (6) months or by a fine of not less than one hundred dollars (\$100) or more than five thousand dollars (\$5,000), or by both such fine and imprisonment.

(2) Except as provided in section 25-3503, Idaho Code, any person convicted of a second violation of any of the provisions of this chapter within ten (10) years of the first conviction, shall be punished for each offense, by



a jail sentence of not more than nine (9) months or a fine of not less than two hundred dollars (\$200) or more than seven thousand dollars (\$7,000) or both fine and imprisonment.

(3) Except as provided in section 25-3503, Idaho Code, any person convicted of a third or subsequent violation, within fifteen (15) years of the first conviction, shall be punished for each offense by a jail sentence of not more than twelve (12) months or a fine of not less than five hundred dollars (\$500) or more than nine thousand dollars (\$9,000) or by both fine and imprisonment. [I.C., § 25-3520A, as added by 1996, ch. 229, § 14, p. 744.]

**Compiler's notes.** Section 13 of S.L. 1996, ch. 229 is compiled as § 25-3518.

**Sec. to sec. ref.** This section is referred to in §§ 25-3513, 25-3516, and 25-3518.

**25-3521. Severability.** — The provisions of this chapter are hereby declared to be severable and if any provision of this chapter or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this chapter. [I.C., § 25-3521, as added by 1994, ch. 346, § 20, p. 1089; am. 1996, ch. 229, § 15, p. 744.]

**Compiler's notes.** The words "this act" refer to S.L. 1994, ch. 346, which is compiled as §§ 25-3501 through 25-3521 and § 18-2407.

Section 21 of S.L. 1994, ch. 346 is compiled as § 18-2407.

## CHAPTER [36] 35

### RATITES

#### SECTION.

[25-3601]. Ratites designated livestock.

[25-3602]. Ratite farms placed under jurisdiction of department of agriculture.

[25-3603]. Application of laws relating to livestock and domestic animals.

#### SECTION.

[25-3604]. Rules for disease prevention.

[25-3605]. Inspection of ratite farms.

[25-3606]. Penalty for violations.

[25-3607]. Property rights in ratite animals.

[25-3608]. Severability.

**[25-3601] 25-3501. Ratites designated livestock.** — It shall be lawful for any person, persons, association or corporation to engage in the business of propagating, breeding, owning or controlling domestic ratites, which are defined as cassowary, ostrich, emu and rhea. For the purposes of all classification and administration of the laws of the state of Idaho, and all administrative orders and rules pertaining thereto, the breeding, raising, producing or marketing of such animals or their products by the producer shall be deemed an agricultural pursuit; such animals shall be deemed livestock and their products shall be deemed agricultural products; the persons engaged in such agricultural pursuits shall be deemed farmers, ratite farmers, ratite breeders or ratite ranchers; the premises within which such a pursuit is conducted shall be deemed farms, ratite farms, or ratite ranches. [I.C., § 25-3501 [25-3601], as added by 1994, ch. 72, § 1, p. 149.]



**Compiler's notes.** Two 1994 acts, chapters 72 and 73, purported to create a new Chapter 35 in Title 25. Chapter 72 has been compiled herein as Title 25, ch. [36] 35 (§§ [25-3601] 25-3501 — [25-3608] 25-3508) while Chapter 73 has been compiled as Title 25, ch. [37] 35 (§§ [25-3701] 25-3501 — [25-3709] 25-3509).

Additionally, S.L. 1994, ch. 346 enacted new sections in Title 25, Chapter 35 and amended and redesignated other sections from Title 18, Chapter 21, to Title 25, Chapter 35, which have been compiled as designated in Title 25, Chapter 35.

**[25-3602] 25-3502. Ratite farms placed under jurisdiction of department of agriculture.** — The department of agriculture and the administrator of the division of animal industries shall have administrative authority for all functions which affect the breeding, raising, producing, marketing or any other phase of the production or distribution of domestic ratites, or the products thereof. [I.C., § 25-3502 [25-3602], as added by 1994, ch. 72, § 1, p. 149.]

**[25-3603] 25-3503. Application of laws relating to livestock and domestic animals.** — All of the provisions of chapter 2, title 25, Idaho Code, applicable to livestock and domestic animals, except those provisions which by their terms are restricted to swine, bovine animals, dairy or breeding cattle, or range cattle, or other particular kind or kinds of livestock and domestic animals to the exclusion of livestock or domestic animals generally, are applicable to domestic ratite animals. [I.C., § 25-3503 [25-3603], as added by 1994, ch. 72, § 1, p. 149.]

**[25-3604] 25-3504. Rules for disease prevention.** — The administrator of the division of animal industries is hereby authorized and empowered to make, promulgate, and enforce general and reasonable rules not inconsistent with law, for the prevention of the introduction or dissemination of diseases among domestic ratite animals of this state, and to otherwise effectuate enforcement of the provisions of chapter 2, title 25, Idaho Code, applicable to domestic ratite animals. [I.C., § 25-3504 [25-3604], as added by 1994, ch. 72, § 1, p. 149.]

**[25-3605] 25-3505. Inspection of ratite farms.** — The division of animal industries and any of its officers shall have the right at any time to inspect any ratite farm, and may go upon such farms or any part thereof to inspect and examine the same and any animals therein. [I.C., § 25-3505 [25-3605], as added by 1994, ch. 72, § 1, p. 149.]

**[25-3606] 25-3506. Penalty for violations.** — Any person, firm or corporation violating any of the provisions of chapter 2, title 25, Idaho Code, applicable to domestic ratite animals, or of the rules promulgated by the division of animal industries for the enforcement thereof, shall be guilty of a misdemeanor and, upon conviction, shall be subject to a fine of not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000) for each offense. [I.C., § 25-3506 [25-3606], as added by 1994, ch. 72, § 1, p. 149.]

[25-3607] 25-3507. **Property rights in ratite animals.** — Domestic ratite animals shall be, together with their offspring and increases, the subject of ownership, lien and absolute property rights, in whatever situation, location or condition such animals may thereafter become, or be, and regardless of their remaining in, or escaping from such restraint or captivity. [I.C., § 25-3507 [25-3607], as added by 1994, ch. 72, § 1, p. 149.]

[25-3608] 25-3508. **Severability.** — The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act. [I.C., § 25-3508 [25-3608], as added by 1994, ch. 72, § 1, p. 149.]

**Compiler's notes.** The words "this act" refer to S.L. 1994, ch. 72, which is compiled as §§ [25-3601] 25-3501 — [25-3608] 25-3508.

CHAPTER [37] 35  
DOMESTIC CERVIDAE FARMS

SECTION.  
[25-3701]. Domestic cervidae farming deemed agricultural pursuit.  
[25-3702]. Transfer of functions from fish and game commission to department of agriculture.  
[25-3703]. Application of laws relating to livestock and domestic animals.

SECTION.  
[25-3704]. Rules for disease prevention.  
[25-3705]. Inspection of cervidae farms.  
[25-3706]. Penalty for violations.  
[25-3707]. Property rights in domestic cervidae.  
[25-3708]. Fees.  
[25-3709]. Severability.

[25-3701] 25-3501. **Domestic cervidae farming deemed agricultural pursuit.** — It shall be lawful for any person, association or corporation to breed, own or control domestic cervidae, which are defined as fallow deer (dama dama), elk (cervus elaphus) or reindeer (rangifer tarandus), but shall not include red deer (urasian cervidae) or any subspecies or hybrids thereof, and hold such animal in captivity for breeding or other useful purposes. Reindeer (rangifer tarandus) shall not be held for domestic purposes north of the Salmon River. For the purposes of all classification and administration of the laws of the state of Idaho, and all administrative orders and rules pertaining thereto, the breeding, raising, producing or marketing of such animals or their products by the producer shall be deemed an agricultural pursuit; such animals shall be deemed livestock and their products shall be deemed agricultural products; the persons engaged in such agricultural pursuits shall be deemed farmers, cervidae farmers, cervidae breeders or cervidae ranchers; the premises within which such pursuit is conducted shall be deemed farms, cervidae farms, or cervidae ranches. [I.C., § 25-3501 [25-3701], as added by 1994, ch. 73, § 1, p. 151.]

**Compiler's notes.** Two 1994 acts, chapters 72 and 73, purported to create a new chapter 35 in Title 25. Chapter 72 has been compiled as Title 25, ch. [36] 35 (§§ [25-3601] 25-3501 — [25-3608] 25-3508) while chapter 73 has been compiled herein as Title 25, ch. [37] 35



(§§ [25-3701] 25-3501 — [25-3709] 25-3509). Additionally, S.L. 1994, ch. 346 enacted new sections in Title 25, Chapter 35 and amended and redesignated other sections from Title 18, Chapter 21, to Title 25, Chapter 35, which have been compiled as designated in Title 25, Chapter 35.

The words enclosed in parentheses so appeared in the law as enacted.

**Sec. to sec. ref.** This chapter is referred to in § 36-701.

This section is referred to in § 36-202.

**[25-3702] 25-3502. Transfer of functions from fish and game commission to department of agriculture.** — All the functions of the fish and game commission and the department of fish and game, which affect the breeding, raising, producing, marketing, or any other phase of the production or distribution, of domestic cervidae, or the products thereof, are hereby transferred to and vested in the department of agriculture and the administrator of the division of animal industries; provided, that this act shall not limit or affect the powers or duties of the department of fish and game relating to nondomestic cervidae or the management and taking thereof, and provided further that the department of agriculture shall address the reasonable concerns of the department of fish and game respecting the domestic farming of cervidae as provided in section 36-106(e)(9), Idaho Code. [I.C., § 25-3502 [25-3702], as added by 1994, ch. 73, § 1, p. 151.]

**[25-3703] 25-3503. Application of laws relating to livestock and domestic animals.** — All of the provisions of chapters 2, 3, 4 and 6, title 25, Idaho Code, applicable to livestock and domestic animals, except those provisions which by their terms are restricted to swine, bovine animals, dairy or breeding cattle, or range cattle, or other particular kind or kinds of livestock and domestic animals to the exclusion of livestock or domestic animals generally, are applicable to domestic cervidae. [I.C., § 25-3503 [25-3703], as added by 1994, ch. 73, § 1, p. 151.]

**[25-3704] 25-3504. Rules for disease prevention.** — The administrator of the division of animal industries is hereby authorized and empowered to make, promulgate, and enforce general and reasonable rules not inconsistent with law, for the prevention of the introduction or dissemination of diseases among domestic cervidae of this state, and to otherwise effectuate enforcement of the provisions of chapters 2, 3, 4 and 6, title 25, Idaho Code, applicable to domestic cervidae. [I.C., § 25-3504 [25-3704], as added by 1994, ch. 73, § 1, p. 151.]

**[25-3705] 25-3505. Inspection of cervidae farms.** — The division of animal industries and any of its officers shall have the right, at any reasonable time, to inspect any domestic cervidae farm, and may go upon such farms or any part thereof where such animals are contained to inspect and examine the same and any animals therein. [I.C., § 25-3505 [25-3705], as added by 1994, ch. 73, § 1, p. 151.]

**[25-3706] 25-3506. Penalty for violations.** — Any person, firm or corporation violating any of the provisions of chapters 2, 3, 4 and 6, title 25,



Idaho Code, applicable to domestic cervidae, or of the rules promulgated by the division of animal industries for the enforcement thereof shall be guilty of a misdemeanor, and upon conviction, shall be subject to a fine of not less than one hundred dollars (\$100) nor more than five thousand dollars (\$5,000) for each offense. [I.C., § 25-3506 [25-3706], as added by 1994, ch. 73, § 1, p. 151.]

**[25-3707] 25-3507. Property rights in domestic cervidae.** — Domestic cervidae shall be, together with their offspring and increases the subject of ownership, lien and absolute property rights, (the same as purely domestic animals) in whatever situation, location, or condition such animals may thereafter become, or be, and regardless of their remaining in, or escaping from such restraint or captivity. [I.C., § 25-3507 [25-3707], as added by 1994, ch. 73, § 1, p. 151.]

**Compiler's notes.** The words enclosed in parentheses so appeared in the law as enacted.

**[25-3708] 25-3508. Fees.** — There is hereby imposed, on domestic cervidae, a fee, not to exceed five dollars (\$5.00) per head per year and shall be due on January 1 of each year. The fee shall be used by the Idaho department of agriculture, division of animal industries, for the prevention, control and eradication of diseases of domestic cervidae. All moneys collected under this provision shall be deposited in the livestock disease control and tuberculosis indemnity fund. [I.C., § 25-3508 [25-3708], as added by 1994, ch. 73, § 1, p. 151.]

**[25-3709] 25-3509. Severability.** — If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions of application of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable. [I.C., § 25-3509 [25-3709], as added by 1994, ch. 73, § 1, p. 151.]

**Compiler's notes.** The words "this act" refer to S.L. 1994, ch. 73, which is compiled as §§ [25-3701 — 25-3709] 25-3501 — 25-3509.

Section 2 of S.L. 1994, ch. 73, is compiled as § 36-701.



## TITLE 26

### BANKS AND BANKING

#### CHAPTER.

1. TITLE AND SCOPE OF ACT, §§ 26-101 — 26-108.
2. ORGANIZATION AND CORPORATION POWERS OF BANKS, §§ 26-201 — 26-217.
3. BANK BRANCHES, §§ 26-301 — 26-312.
4. BANK SERVICE CORPORATIONS, §§ 26-401 — 26-406.
5. BANK HOLDING COMPANIES, §§ 26-501 — 26-509.
6. RESERVES, SURPLUS AND DIVIDENDS, §§ 26-601 — 26-605.
7. LIMITATIONS ON LOANS, INVESTMENTS, AND PRACTICES, §§ 26-701 — 26-719.
8. LIMITATIONS ON BORROWING MONEY AND PLEDGING ASSETS, §§ 26-801 — 26-807.
9. CONSOLIDATION, SALE AND REORGANIZATION, §§ 26-901 — 26-912.
10. CLOSING AND LIQUIDATION OF BANKS, §§ 26-1001 — 26-1027.
11. SUPERVISION BY DEPARTMENT OF FINANCE, §§ 26-1101 — 26-1117.
12. CIVIL AND CRIMINAL PENALTIES, §§ 26-1201 — 26-1220.
13. TRUST COMPANIES AND TRUST DEPARTMENTS, § 26-1301.
14. AFFILIATED BANK COMPANY, §§ 26-1401 — 26-1405.
15. MISCELLANEOUS PROVISIONS, §§ 26-1501, 26-1502.
16. IDAHO INTERSTATE BRANCHING ACT, §§ 26-1601 — 26-1606.
17. IDAHO INTERNATIONAL BANKING ACT, §§ 26-1701 — 26-1716.
18. SAVINGS BANKS, §§ 26-1801 — 26-1816.

#### CHAPTER.

- 19, 20. [REPEALED.]
21. IDAHO CREDIT UNION ACT, §§ 26-2101 — 26-2188.
22. COLLECTION AGENCIES, §§ 26-2201 — 26-2252.
23. [REPEALED.]
24. INDUSTRIAL DEVELOPMENT CORPORATIONS, §§ 26-2401 — 26-2418.
25. LOAN BROKERS, §§ 26-2501 — 26-2506.
26. IDAHO INTERSTATE BANKING ACT, §§ 26-2601 — 26-2613.
27. BUSINESS AND INDUSTRIAL DEVELOPMENT CORPORATIONS, §§ 26-2701 — 26-2732.
28. MORTGAGE COMPANIES, §§ 26-2801 — 26-2811.
29. MONEY TRANSMISSION, §§ 26-2901 — 26-2928.
30. UNIVERSITY DEBIT CARD ACT, §§ 26-3001 — 26-3004.
31. RESIDENTIAL MORTGAGE PRACTICES, §§ 26-3101 — 26-3116.
32. TRUST INSTITUTIONS — GENERAL PROVISIONS, §§ 26-3201 — 26-3208.
33. TRUST INSTITUTIONS — STATE TRUST INSTITUTION OFFICES, §§ 26-3301 — 26-3305.
34. TRUST INSTITUTIONS — OUT-OF-STATE TRUST INSTITUTION OFFICES, §§ 26-3401 — 26-3407.
35. TRUST INSTITUTIONS — STATE TRUST COMPANY ORGANIZATION — GENERAL PROVISIONS, §§ 26-3501 — 26-3510.
36. TRUST INSTITUTIONS — SUPERVISION AND ENFORCEMENT, §§ 26-3601 — 26-3609.

#### CHAPTER 1

##### TITLE AND SCOPE OF ACT

#### SECTION.

- 26-101. Title.
- 26-102. Purpose of the act.
- 26-103. Construction against implicit repeal.
- 26-104. Severability.
- 26-105. Effect of act on existing banks.

#### SECTION.

- 26-106. Definitions.
- 26-107. Sections applicable to national banks.
- 26-108. [Repealed.]

**26-101. Title.** — This act, comprising chapters 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 14, 15, 16, 17, 18, 26, 32, 33, 34, 35 and 36, title 26, Idaho Code, as such chapters may be hereafter amended, shall be known as the "Idaho Bank Act" and shall be applicable to all corporations, copartnerships, cooperative associations and persons engaged in the business of banking in the state of Idaho. [I.C., § 26-101, as added by 1979, ch. 41, § 2, p. 62; am.



1995, ch. 99, § 1, p. 299; am. 1997, ch. 310, § 2, p. 917; am. 2000, ch. 288, § 1, p. 970.]

**Compiler's notes.** Former §§ 26-101 — 26-107 which comprised S.L. 1925, ch. 133, §§ 1 — 5, 82, 83, p. 190; am. 1929, ch. 192, §§ 1, 2, p. 353; I.C.A., §§ 25-101 — 25-107; am. 1951, ch. 139, § 3, p. 324; am. 1974, ch. 24, §§ 20, 21, p. 744, were repealed by S.L. 1979, ch. 41, § 1.

Section 2 of S.L. 1995, ch. 99 is compiled as § 26-107.

Section 2 of S.L. 2000, ch. 288, is compiled as § 26-1111.

Section 1 of S.L. 1997, ch. 310 repealed Chapters 18 and 19 of Title 26 and § 3 is compiled as §§ 26-1801 — 26-1815.

**Sec. to sec. ref.** This title is referred to in §§ 26-2412, 67-6206 and 67-6211.

This chapter is referred to in § 26-1111.

## DECISIONS UNDER PRIOR LAW

### ANALYSIS

Removal of directors.  
Scope of act.

#### Removal of Directors.

Former banking act enacted in 1925 and the business incorporation act enacted in 1929 were not repugnant to each other on the power of the stockholders of a banking institution to remove members of the board of directors, since the banking act was silent on the question and the business incorporation law expressly provides for removal of members of the board by the stockholders. *Doolittle v. Morley*, 77 Idaho 366, 292 P.2d 476 (1956).

The bank act does not within itself provide

for the removal of a bank director. *Doolittle v. Morley*, 77 Idaho 366, 292 P.2d 476 (1956).

#### Scope of Act.

The bank act constitutes a complete system of organization, regulation, and liquidation of state banks and repeals and supersedes all provisions conflicting with it. *Lloyd v. Diefendorf*, 54 Idaho 607, 34 P.2d 53 (1934).

The bank act requires that the articles of incorporation of a banking institution must conform with the requirements of the business corporation laws, except as otherwise provided by the banking act. *Doolittle v. Morley*, 77 Idaho 366, 292 P.2d 476 (1956).

**Collateral References.** 10 Am. Jur. 2d, Banks, § 1.

9 C.J.S., Banks and Banking, §§ 1-3.

**26-102. Purpose of the act.** — The purposes of this act are to provide for:

- (1) Safe and prudent conduct of the banking business for the benefit of depositors and shareholders.
- (2) Maintenance of public confidence in banks.
- (3) An opportunity for banks to remain competitive with each other, with financial institutions existing under other laws of this state and to encourage the continuation, maintenance and preservation of the dual banking system. [I.C., § 26-102, as added by 1979, ch. 41, § 2, p. 62.]

**Compiler's notes.** Former § 26-102 was repealed. See Compiler's notes, § 26-101.

For words "this act" see § 26-101.

**26-103. Construction against implicit repeal.** — This act being a general act intended as a unified coverage of its subject matter, no part of it shall be deemed to be impliedly repealed by subsequent legislation if such construction can reasonably be avoided. [I.C., § 26-103, as added by 1979, ch. 41, § 2, p. 62.]

**Compiler's notes.** Former § 26-103 was repealed. See Compiler's notes, § 26-101.

For words "this act" see § 26-101.

**26-104. Severability.** — If any provision of this act or the application thereof to any person or circumstances is held invalid, the invalidity does not effect [affect] other provisions or applications of this act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable. [I.C., § 26-104, as added by 1979, ch. 41, § 2, p. 62.]

**Compiler's notes.** Former § 26-104 was repealed. See Compiler's notes, § 26-101.  
For words "this act" see § 26-101.

The bracketed word "affect" was inserted by the compiler.

**26-105. Effect of act on existing banks.** — The powers, privileges, duties and restrictions heretofore conferred and imposed upon any bank now existing and doing business under the laws of this state, are hereby abridged, enlarged or modified as each particular case may require to conform with the provisions of this chapter. [I.C., § 26-105, as added by 1979, ch. 41, § 2, p. 62.]

**Compiler's notes.** Former § 26-105 was repealed. See Compiler's notes, § 26-101.

**26-106. Definitions.** — As used in this act, unless the context or subject matter otherwise requires:

(1) "Bank" means any person engaged in soliciting, receiving or accepting money or its equivalent on deposit as a regular business whether or not such deposit, however evidenced, is made subject to check or draft or other order.

(2) "Banking business" means the soliciting, receiving or accepting of money or its equivalent on deposit as a regular business whether such deposit is made subject to check or draft or is evidenced by a certificate of deposit, a passbook, a note, a receipt, or other writing; provided, that nothing herein shall apply to or include money or its equivalent left in escrow or left with an agent pending investment in real estate or securities for or on account of his principal.

(3) "Banking facility" means a place of business of a bank which performs activities limited to:

(a) taking applications for loans, accepting deposits, issuing receipts therefor, and transmitting such deposits to the bank maintaining such facility;

(b) carrying and disbursing cash change, cashing checks, accepting checks;

(c) issuing checks drawn on or certified by the bank operating the facility, renting safety deposit boxes, keeping necessary accounts of all transactions; and carrying out such other transactions as the director may allow by regulation.

(4) "Bank service corporation" means a corporation organized to perform bank services for two (2) or more banks, each of which owns part of the capital stock of such corporation, and which are subject to examination by either the department of finance of the state of Idaho or a federal bank supervisory agency.

For the purpose of this definition "bank services" means services such as check and deposit sorting and posting, computation and posting of interest and other credits and charges, preparation and mailing of checks, statements, notices, and similar items, or any other clerical, bookkeeping, accounting, statistical, or similar functions performed for a bank.

(5) "Borrowing" means any nondeposit liability.

(6) "Branch" means any location except a bank facility or customer-bank communication terminal or bank service corporation at which a bank performs any or all functions of a bank.

(7) "Capital" means the amount of unimpaired paid-up common stock plus the amount of paid-up preferred stock issued and unimpaired.

(8) "Capital note" means a convertible or nonconvertible note of a bank subordinated as to principal and interest to the depositors of the bank and containing such conditions as the director may require.

(9) "Capital structure" means the total of the capital, surplus, undivided profits and subordinated capital notes and contingency reserves of the bank or such other account as determined by the director of the department of finance.

(10) "Common stock" means the stock of a banking corporation other than preferred stock.

(11) "Commercial paper" means a short term negotiable instrument arising out of a commercial transaction; provided, however, that commercial paper shall not be construed to be a deposit as defined in this act.

(12) "Converting bank" means a bank converting from a state to a national bank, or the reverse.

(13) "Demand deposit" means all deposits except time deposits.

(14) "Deposit" means the act of placing or lodging money in the custody of a person, for safety or convenience whether interest-bearing or not, to be withdrawn at the will of the depositor or under rules, terms and regulations agreed upon by the depositor and the depository. If the context requires, deposit may also mean the money so deposited or the credit the depositor receives for it.

(15) "Depositor" means any person who deposits money.

(16) "Director" means the director of the department of finance.

(17) "Dissenting stockholder" means a stockholder dissenting and voting his dissent as provided in this act.

(18) "Executive officer" means each officer of a bank, who by virtue of his position, has both voice in the formulation of the policy of the bank and responsibility for the implementation of such policy.

(19) "Federal funds" means member bank deposits at federal reserve banks.

(20) "Federal reserve act" means and includes the act of congress of the United States approved December 23, 1913, as amended.

(21) "Federal reserve bank" means a federal reserve bank created and organized under the authority of the Federal Reserve Act.

(22) "Federal reserve board" means the board of governors of the Federal Reserve System created and described in the Federal Reserve Act.



(23) "Federal bank supervisory agency" means the comptroller of the currency, the board of governors of the Federal Reserve System, or the board of directors of the Federal Deposit Insurance Corporation.

(24) "Fiduciary" means trustee, agent, executor, administrator, personal representative, committee, guardian or conservator for a minor or other incompetent person, receiver, trustee in bankruptcy, assignee for creditors or any holder of a similar position of trust.

(25) "Member bank" means any national bank or state bank which has become or which becomes a member of one (1) of the federal reserve banks created by the Federal Reserve Act.

(26) "Merger" means the union of two (2) or more bank corporations by the transfer of property of all to one [1] of them. As used in this act "merger" includes a consolidation.

(27) "Merging bank" means a party to a merger.

(28) "Mobile facility" means a banking facility which is moved from place to place and not permanently attached to real property.

(29) "National bank" means a bank organized under the laws of the United States and issued an organization certificate by the comptroller of the currency.

(30) "Net demand deposits" mean the total of the bank's demand deposits after subtracting from the deposit balance due to any bank the deposit balance due from the same bank (other than trust funds deposited by either bank) and any cash items in the process of collection due from or due to such banks shall be included in determining such net balance, except that balances of time deposits of any bank and any balances standing to the credit of private banks, of banks in foreign countries, of foreign branches of other American banks, and of American branches of foreign banks shall be reported gross without any such subtraction, and excluding any deposits received in any office of the bank for deposits in any other office of the bank. The amount of trust funds held in the bank's own trust department, which the bank keeps segregated and apart from its general assets and does not use in the conduct of its business, shall not be included as net deposits.

(31) "Net profits" means profits remaining after the deduction of all expenses including depreciation, losses, or doubtful assets, as required by the director of the department of finance, interest, and taxes accrued or due.

(32) "Person" means a natural person, corporation, partnership, association, cooperative association, unincorporated association, trust, or any other legal or commercial entity.

(33) "Preferred stock" means a class of the stock of a banking corporation issued in accordance with section 26-206, Idaho Code, which is accorded a preference or priority over the common stock of the corporation.

(34) "Resulting bank" means the bank resulting from a merger or conversion.

(35) "Savings deposit" means a deposit:

(a) that consists of funds deposited to the credit of or in which the entire beneficial interest is held by one (1) or more individuals, or a corporation, association, or other organization operated primarily for religious, philanthropic, charitable, educational, fraternal, or other similar purposes

and not operated for profit; or that consists of funds deposited to the credit of or in which the entire beneficial interest is held by the United States, any state of the United States, or any county, municipality, or political subdivision thereof, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, America [American] Samoa, Guam, or political subdivision thereof; or that consists of funds deposited to the credit of, or in which any beneficial interest is held by a corporation, association, or other organization not qualifying above to the extent such funds do not exceed one hundred fifty thousand dollars (\$150,000) per such depositor at a bank; and

(b) with respect to which the depositor is not required by the deposit contract but may at any time be required by the bank to give notice in writing of an intended withdrawal not less than thirty (30) days before such withdrawal is made and which is not payable on a specified date or at the expiration of a specified time after the date of deposit.

(36) "State bank" means any bank chartered by the state of Idaho.

(37) "Temporary banking facility" means a banking facility which is operated for less than thirty (30) days and is established for the purpose of providing bank facility services for a specific occasion.

(38) "Time certificate of deposit" means a deposit evidenced by a negotiable on [or] non-negotiable instrument which provides on its face that the amount of such deposit is payable to bearer or to any specified person or to his order:

(a) on a certain date, specified in the instrument, not less than thirty (30) days after the date of the deposit; or

(b) at the expiration of a certain specified time not less than thirty (30) days after date of the instrument; or

(c) upon notice in writing which is actually required to be given not less than thirty (30) days before the date of repayment; and

(d) in all cases only upon presentation and surrender of the instrument.

(39) "Time deposit" means time certificates of deposit, time deposits open account, and savings deposits.

(40) "Time deposits open account" means a deposit, other than a time certificate of deposit, with respect to which there is in force a written contract with the depositor that neither the whole nor any part of such deposit may be withdrawn, by check or otherwise, prior to the date of maturity, which shall be not less than thirty (30) days after the date of the deposit, or prior to the expiration of the period of notice which must be given by the depositor in writing not less than thirty (30) days in advance of withdrawal.

(41) "Trust department" means the division of a bank which has been granted trust powers by the director of finance. [I.C., § 26-106, as added by 1979, ch. 41, § 2, p. 62.]

**Compiler's notes.** Former § 26-106 was repealed. See Compiler's notes, § 26-101.

For words "this act" see § 26-101.

The Federal Reserve Act referred to in

subsection (25) of this section is compiled throughout title 12 of the United States Code.

The bracketed number "1", in subsection (26), the bracketed word "American" in subdi-



vision 35 (a) and the bracketed word "or" in the introductory sentence of subsection (38) were inserted by the compiler.

The words in parentheses so appeared in the law as enacted.

**Cross ref.** Savings and loan associations, § 26-1801 et seq.

**Sec. to sec. ref.** This section is referred to in §§ 26-718, 26-3004, 26-3203.

This section is referred to in § 26-3203.

**Collateral References.** 10 Am. Jur. 2d, Banks, §§ 1-6, 10-19.

9 C.J.S., Banks and Banking, §§ 1-40.

**26-107. Sections applicable to national banks.** — The provisions of sections 26-215, 26-301 through and including, 26-309, 26-311, 26-716, 26-717, 26-718, 26-1203, 26-1206, 26-1207, 26-1208, and 26-1209, 26-1601 through 26-1605, 26-2601 through 26-2612, Idaho Code, shall also apply to national banks. [I.C., § 26-107, as added by 1979, ch. 41, § 2, p. 62; am. 1995, ch. 99, § 2, p. 299; am. 1997, ch. 225, § 1, p. 661.]

**Compiler's notes.** Former § 26-107 was repealed. See Compiler's notes, § 26-101.

Section 26-1209, referred to in this section, was repealed.

Sections 1 and 3 of S.L. 1995, ch. 99 are compiled as §§ 26-101 and 26-301, respectively.

Section 2 of S.L. 1997, ch. 225 is compiled as § 26-311.

**Cited in:** Idaho v. Security Pac. Bank Idaho, 800 F. Supp. 922 (D. Idaho 1992).

## 26-108. Commercial bank as trustee. [Repealed.]

**Compiler's notes.** This section which comprised I.C., § 26-108, as added by 1977, ch.

181, § 1, p. 507 was repealed by S.L. 1979, ch. 41, § 1. For present law, see § 26-216.

## CHAPTER 2

### ORGANIZATION AND CORPORATION POWERS OF BANKS

#### SECTION.

26-201. General corporation laws applicable.

26-202. Authorization necessary to do business.

26-203. Articles of incorporation — Form.

26-204. Articles of incorporation — Amendment.

26-205. Incorporation — Capital structure required.

26-206. Preferred stock.

26-207. Bylaws.

26-208. Place of meetings.

26-209. Time of annual meeting.

26-210. Stockbook.

26-211. Stock-transfers.

#### SECTION.

26-212. Right of examination by stockholder.

26-213. Board of directors — Election, meetings, duties, liabilities, oath, removal — Officers — Election and bond.

26-214. Power of banks to grant options to purchase or sell shares of its stock to its employees.

26-215. Federal reserve — Membership.

26-216. Custodial accounts.

26-217. Banks empowered to comply with requirements for federal deposit insurance.

**26-201. General corporation laws applicable.** — Except as otherwise provided herein, the general business corporation laws of this state shall apply to all corporations organized and operating under the bank act. [I.C., § 26-201, as added by 1979, ch. 41, § 2, p. 62.]

**Compiler's notes.** Former §§ 26-201 — 26-216 which comprised S.L. 1925, ch. 133, §§ 6-17, 47, 51, p. 190; I.C.A., §§ 25-201 — 25-214; am. 1933 (E.S.), ch. 10, §§ 1-3, p. 19; am. 1935, ch. 51, § 1, p. 98; am. 1941, ch. 39,

§ 1, p. 86; am. 1951, ch. 139, § 4, p. 324; am. 1957, ch. 93, § 1, p. 156, ch. 110, § 1, p. 188, ch. 123, § 1, p. 204, ch. 180, § 1, p. 344; am. 1959, ch. 86, § 1, p. 197; am. 1967, ch. 75, § 1, p. 173 were repealed by S.L. 1979, ch. 41, § 1.



**Cross ref.** Bank holding companies, §§ 26-501 — 26-509.

Bank service corporations, § 26-401 et seq.

Civil and criminal penalties, § 26-1201 et seq.

Closing and liquidation of banks, § 26-1001 et seq.

Consolidation, sale and reorganization, § 26-901 et seq.

Definitions, § 26-106.

Idaho Business Corporation Act, § 30-1-101 et seq.

Limitations on borrowing money and pledg-

ing assets, § 26-801 et seq.

Limitations on loans, investments and practices, § 26-701 et seq.

Reserves, surplus and dividends, § 26-601 et seq.

Savings and loan associations, §§ 26-1801 — 26-1946.

Supervision by department of finance, § 26-1101 et seq.

Trust companies and departments, § 26-1301 et seq.

**Sec. to sec. ref.** This chapter is referred to in §§ 26-1111, 26-1219, 26-1606.

#### DECISIONS UNDER PRIOR LAW

#### Removal of Directors.

The calling of a special meeting of the stockholders of a banking corporation by the holder of more than 50% of the outstanding stock for consideration of removal of the board of directors, and the removal of the board of

directors by a vote of two-thirds of the outstanding shares was valid, since there was a compliance with the articles of incorporation and the business corporation law. *Doolittle v. Morley*, 77 Idaho 366, 292 P.2d 476 (1956).

**26-202. Authorization necessary to do business.** — It shall be unlawful for any person to engage in or transact any banking business in this state except by means of a corporation duly organized for that purpose and chartered under the bank act. Corporations organized to engage in and transact banking business shall be formed by five (5) or more natural persons under the general business corporation laws of this state and as provided in the bank act.

Except as specifically authorized by other laws of the state of Idaho, no person except a national bank shall engage in or transact any banking business except as is incidental or necessarily preliminary to its organization without the written approval of the director and without his written charter stating that it has complied with the provisions of the bank act and all of the requirements of law and that it is authorized to transact banking business within the state. To obtain a charter the incorporators shall file with the director the following information:

- (a) five (5) copies of its articles of incorporation,
- (b) satisfactory proof of compliance with section 26-204, Idaho Code,
- (c) the names and addresses of its officers and directors,
- (d) the names and addresses of all subscribers to its common stock and the amounts subscribed by each,
- (e) the oath of each and every director as provided in section 26-213, Idaho Code,
- (f) the affidavit of its directors to the effect that said corporation has complied with all the provisions of the bank act required to authorize it to commence business, and
- (g) such other information as the director may require in the form required by the director.

Upon filing of the foregoing, it shall be the duty of the department to examine and investigate into the condition of the corporation, ascertaining whether or not the capital has been paid in and whether the corporation has complied with all the provisions of the law required to entitle it to engage in

the business of banking. The department shall also ascertain from the best sources of information at its command whether the character and general fitness of the persons named as subscribers and officers and directors are such that the bank may be operated in a safe, prudent and profitable manner and as to command the confidence of the community in which such bank is proposed to be located. The department shall collect a fee on demand from the corporation which fee shall not be less than one hundred fifty dollars (\$150) or more than two thousand dollars (\$2,000) based upon the cost of such examination and investigation. If upon such examination, and investigation, it appears that the corporation is lawfully entitled to commence banking business, and the directors and officers are competent to engage in banking business, and its subscribers are such as to command the confidence of the community, and if, in the opinion of the director the organization of the bank is justified, the director shall forthwith issue to the corporation a bank charter, under official seal.

If the director has reason to believe that the corporation has been formed for any other business than the legitimate banking business contemplated by the bank act or that the subscribers, officers and directors will not operate the bank in a safe, prudent and profitable manner, or that the bank will not have qualified experienced management with experience commensurate with the area where the bank is proposed to be located, he shall withhold such charter, and he may withhold the issuance of such charter to a corporation seeking to engage in banking business in an area which in his judgment does not justify or warrant a new or additional bank or could not support a profitable banking corporation.

No unit bank hereafter organized shall be permitted to be acquired for the purpose of establishing a branch banking office or a branch bank until it shall have been in operation as a unit bank for a period of five (5) years. [I.C., § 26-202, as added by 1979, ch. 41, § 2, p. 62.]

**Compiler's notes.** Former § 26-202 was repealed. See Compiler's notes, § 26-201.  
**Cross ref.** Membership in industrial devel-

opment corporations, § 26-2405.  
**Sec. to sec. ref.** This section is referred to in § 26-211.

DECISIONS UNDER PRIOR LAW

ANALYSIS

Appeals.  
Discretion of director.  
Granting of bank charter.

**Appeals.**

Defendant commissioner (now director) appealed from judgment of trial court in mandamus proceedings requiring his approval as to form and content and return to plaintiff of articles of incorporation for a bank and issuance to it of certificate or charter authorizing it to engage in the banking business when the trial court had held that the right of the plaintiffs to recover was to be determined by facts existing at the time of the commence-

ment of the action and their right could not be prejudiced or affected by the subsequent action of the defendant in thereafter making findings of fact. *Leuhrs v. Spaulding*, 80 Idaho 326, 328 P.2d 582 (1958).

**Discretion of Director.**

Defendant commissioner's (now director's) contention of discretionary action in mandamus proceedings brought to compel him to issue a certificate to allow corporation to engage in a banking business could not be sustained where plaintiffs had filed all instruments required by law, that the bank had complied with all provisions of law required to entitle it to engage in a banking business, that the character and general fitness of such



stockholders and officers of said bank were such as to command the confidence of the community in which said bank was to be located, could not be sustained, defendant commissioner (now director) having expressly approved the application as to all matters except those discretionary. *Leuhrs v. Spaulding*, 80 Idaho 326, 328 P.2d 582 (1958).

This section authorizes the commissioner (now director) to ascertain, weigh and pass judgment upon the facts relating to the character and general fitness of the persons named as stockholders and officers to command the confidence of the community, their competency to engage in a banking business and whether conditions warrant the organization of a new and additional bank, such matters clearly involving discretion. The same section makes it the mandatory duty of the commissioner (now director), if the questions be answered in the affirmative, forthwith to issue the certificate and authorizes him to withhold certificate if answers in the negative. *Leuhrs v. Spaulding*, 80 Idaho 326, 328 P.2d 582 (1958).

#### **Granting of Bank Charter.**

Where under the facts the granting of the

bank charter by defendant commissioner (now director) was purely a ministerial act, the writ of mandamus would be properly issued, defendant having determined that banking corporators had complied with all statutory provisions required to entitle such bank to engage in banking, stockholders and officers were of such character and general fitness as to command confidence in the community, the additional bank was justified in that area, such bank was entitled lawfully to commence business in the community, stockholders would command confidence in the community. *Leuhrs v. Spaulding*, 80 Idaho 326, 328 P.2d 582 (1958).

The fear of defendant commissioner (now director) of retaliation by the comptroller of the currency if he issued a bank charter was not of itself a legal reason for denying the charter, it not being one of the statutory reasons for withholding as said comptroller might issue a number of charters. *Leuhrs v. Spaulding*, 80 Idaho 326, 328 P.2d 582 (1958).

**Collateral References.** 9 C.J.S., Banks and Banking, §§ 15-20, 748.

**26-203. Articles of incorporation — Form.** — Proposed articles of incorporation of a banking corporation shall be in a form acceptable to the director, and must be submitted to the director for approval as to form and content before the same are filed for record in the offices of the secretary of state and county recorder; provided that no bank shall be required to have the word "corporation" in its corporate name. The articles may include a provision which eliminates or limits the personal liability of the directors of the bank in accordance with section 30-1-202, Idaho Code, provided that such provision shall not eliminate or limit the liability of a director under section 26-213(5), Idaho Code. [I.C., § 26-203, as added by 1979, ch. 41, § 2, p. 62; am. 1990, ch. 242, § 1, p. 694; am. 1998, ch. 337, § 1, p. 1082.]

**Compiler's notes.** Former § 26-203 was repealed. See Compiler's notes, § 26-201.

#### DECISIONS UNDER PRIOR LAW

##### ANALYSIS

Approval before filing.  
Filing of instruments.

#### **Approval Before Filing.**

The articles of incorporation of a banking institution must be approved by the commissioner of finance (now director of department of finance) before it is filed. *Doolittle v. Morley*, 77 Idaho 366, 292 P.2d 476 (1956).

#### **Filing of Instruments.**

Defendant commissioner's (now director's) contention of discretionary action in manda-

mus proceedings brought to compel him to issue a certificate to allow corporation to engage in a banking business could not be sustained where plaintiffs have filed all instruments required by law, the bank had complied with all provisions of law required to entitle it to engage in a banking business, and the character and general fitness of such stockholders and officers of said bank were such as to command the confidence of the community in which said bank was to be located, defendant commissioner (now director) having expressly approved the application as to all matters except those discretion-



ary, and the granting of the charter being a purely ministerial act. *Leuhrs v. Spaulding*, 80 Idaho 326, 328 P.2d 582 (1958).

**Collateral References.** 10 Am. Jur. 2d, Banks, §§ 20-26.  
9 C.J.S., Banks and Banking, § 33.

**26-204. Articles of incorporation — Amendment.** — Any proposed amendment to the articles of incorporation of a bank shall, before the same is adopted, be submitted to the director for his approval as to form and content. In addition to the articles of amendment to be filed with the secretary of state under the provisions of the general business corporation act, like articles and a copy of the articles of incorporation as amended must be filed in the office of the director and no amendment shall be operative nor effective until such articles be filed in the office of the director and shall have been approved in writing by the director. The articles of incorporation may be amended to include a provision which eliminates or limits the personal liability of the directors of the bank in accordance with section 30-1-202, Idaho Code, provided that such provision shall not eliminate or limit the liability of a director under section 26-213(5), Idaho Code. [I.C., § 26-204, as added by 1979, ch. 41, § 2, p. 62; am. 1990, ch. 242, § 2, p. 694; am. 1998, ch. 337, § 2, p. 1082.]

**Compiler's notes.** Former § 26-204 was repealed. See Compiler's notes, § 26-201.

Section 3 of S.L. 1998, ch. 337 is compiled as § 26-1206.

**Sec. to sec. ref.** This section is referred to in § 26-202.

#### DECISIONS UNDER PRIOR LAW

##### ANALYSIS

Approval before filing.

Approval of amendment of articles.

Reconsideration of application.

Right to exercise power without court interference.

Statutory duty of director.

##### Approval Before Filing.

The articles of incorporation of a banking institution must be approved by the commissioner of finance (now director of the department of finance) before it is filed. *Doolittle v. Morley*, 77 Idaho 366, 292 P.2d 476 (1956).

##### Approval of Amendment of Articles.

Any application to amend the articles of incorporation of a bank must be approved by the commissioner of finance (now director of the department of finance). *Williams v. Koelsch*, 67 Idaho 341, 180 P.2d 237 (1947).

##### Reconsideration of Application.

The failure of the then commissioner of finance (now director of the department of finance) to pass upon a request for reconsideration of an application was clearly an at-

tempt to avoid his duty and was not binding nor did it preclude a subsequent finding by a successor commissioner (now director). *Williams v. Koelsch*, 67 Idaho 341, 180 P.2d 237 (1947).

##### Right to Exercise Power without Court Interference.

After denial of an application for the amendment of a bank's articles of incorporation, the same may be reconsidered and a writ of prohibition will issue to prevent a court from taking action to restrain such reconsideration by the commissioner of finance (now director of the department of finance). *Williams v. Koelsch*, 67 Idaho 341, 180 P.2d 237 (1947).

##### Statutory Duty of Director.

It is the statutory duty of the commissioner of finance (now director of the department of finance) to pass upon an application to amend a bank's articles of incorporation. *Williams v. Koelsch*, 67 Idaho 341, 180 P.2d 237 (1947).

**Collateral References.** 10 Am. Jur. 2d, Banks, § 26.

9 C.J.S., Banks and Banking, § 33.

**26-205. Incorporation — Capital structure required.** — (1) Every banking corporation hereafter organized must have common stock, surplus and undivided profits paid up in unhypothecated cash of not less than the following amounts:

(a) In cities, and communities the population of which does not exceed six thousand (6,000), a minimum of two hundred fifty thousand dollars (\$250,000) in par value of common stock, fifty thousand dollars (\$50,000) in surplus, and twenty-five thousand dollars (\$25,000) in undivided profits.

(b) In cities, or communities the population of which exceeds six thousand (6,000), but does not exceed fifty thousand (50,000), a minimum of three hundred fifty thousand dollars (\$350,000) in par value common stock, seventy thousand dollars (\$70,000) in surplus, and thirty-five thousand dollars (\$35,000) in undivided profits.

(c) In cities, or communities the population of which exceeds fifty thousand (50,000), a minimum of one million dollars (\$1,000,000) in par value of common stock, two hundred thousand dollars (\$200,000) in surplus, and one hundred thousand dollars (\$100,000) in undivided profits.

(d) The par value of common stock, surplus and undivided profit amounts set out herein are minimum amounts only, and the director may in his discretion require larger amounts of par value of common stock, surplus and undivided profits.

(2) No original subscription to the stock of any bank hereafter organized under the laws of this state shall be valid or operative unless the subscriber also subscribes and actually pays in, in cash, at the time he pays such subscription an additional amount equal to twenty percent (20%) of his subscription, for the purpose of constituting surplus funds for such bank and an additional amount equal to ten percent (10%) of his subscription for the purpose of constituting undivided profits for such bank to be used, so far as necessary, in paying the costs of organization and for the general expenses of the bank. No bank shall issue any share of stock until the full par value thereof, plus twenty percent (20%) surplus and ten percent (10%) undivided profits, has been actually paid in, in cash, as above provided.

(3) The entire par value of the common stock, plus surplus and undivided profits of every banking corporation hereafter formed shall be paid in, in cash, and deposited in a bank in the state of Idaho before a corporation may be authorized to commence banking business. A subscription for which a subscriber gives the banking corporation his or her note in payment or part payment of the par value of common stock, plus surplus or undivided profits is void. Stock issued pursuant to this section may not be used as security for a loan to purchase stock.

(4) For the purpose of this section, the population shown and determined by the last preceding federal census, or any subsequent census compiled and certified under any law of this state, shall be deemed to be the population of any city in which any such bank is to be organized. If the principal place of business of any bank so organized is located outside of the corporate limits of any city or village, then the population within a radius of five (5) miles of its principal place of business, which is not included within the boundaries



of any municipal corporation, as such population is shown and determined by such federal or subsequent official census, shall be the basis for classification under the provisions of this section.

(5) A bank may not issue preferred stock to meet the capitalization requirements of this section. [I.C., § 26-205, as added by 1979, ch. 41, § 2, p. 62.]

**Compiler's notes.** Former § 26-205 was repealed. See Compiler's notes, § 26-201.

**Sec. to sec. ref.** This section is referred to in §§ 26-702, 26-1303 and 26-1306, 26-3504.

#### DECISIONS UNDER PRIOR LAW

##### **Additional Bank Justified.**

Where under the facts the granting of the bank charter by defendant commissioner (now director) was purely a ministerial act, the writ of mandamus would be properly issued, defendant having determined that banking incorporators had complied with all statutory provisions required to entitle such bank to engage in banking, stockholders and officers were of such character and general fitness as to command confidence in the community, the additional bank was justified in that area, and thus such bank was entitled lawfully to commence business in the community. *Leuhrs v. Spaulding*, 80 Idaho 326, 328 P.2d 582 (1958).

**Collateral References.** 10 Am. Jur. 2d, Banks and Financial Institutions, §§ 256, 285, 296.

9 C.J.S., Banks and Banking, §§ 48-51, 624.

Corporate existence of bank, mode of proving. 3 A.L.R. 101.

Fraud, insolvency of corporation as barring stockholder's right to rescind subscription. 41 A.L.R. 674; 46 A.L.R. 484.

Assumed or fictitious name or designation not showing names of persons interested, applicability to banking business of statutes as to doing business under. 45 A.L.R. 231; 42 A.L.R.2d 516.

Reorganization, consolidation or merger of bank as affecting liability on stock subscription. 45 A.L.R. 1031.

Fraud inducing subscription or purchase of stock as defense against statutory superadded liability. 51 A.L.R. 1203.

Judicial notice as to incorporation and existence of bank. 89 A.L.R. 1337.

Compensation for procuring subscriptions for stock, constitutionality, construction, and application of statutes which forbid or otherwise regulate. 115 A.L.R. 1362.

**26-206. Preferred stock.** — (1) Subject to the provisions of the bank act, and by and with the approval and consent of the director, any bank now or hereafter incorporated under the laws of this state, may issue such part of its capital as is approved by the director, as preferred stock having such special rights, preferences, privileges, immunities, qualifications and restrictions as to voting, dividends, redemption, retirement, participation in corporate assets, not common to other stock, as provided in its articles of incorporation as hereafter adopted or amended, and as are not inconsistent with the provisions of the bank act and the provisions of its articles of incorporation or amendments thereto.

(2) Dividends on preferred stock may be declared and paid only from net profits as defined by section 26-503 [26-604], Idaho Code, but such net profits may be current profits or those accumulated as surplus. No dividend shall be declared nor paid, any retirement or redemption of such stock be made, nor any other distribution or payment of corporate assets made thereon or therefor at any time when the total common stock and surplus is below or will be thereby reduced below the minimum common stock required by law plus a surplus fund equal to ten percent (10%) of such minimum common stock or the amount of common stock required by the director at the



time the bank's charter was issued plus a surplus fund equal to ten percent (10%) of such required common stock.

(3) Preferred stock under the provisions of this act must be subscribed and paid for at not less than par value.

(4) Except as otherwise provided in the bank's articles of incorporation or by the bank act, preferred stock authorized by this act is capital and shall be considered as such in computing the capital structure of the bank within the meaning of all provisions of the bank act. [I.C., § 26-206, as added by 1979, ch. 41, § 2, p. 62.]

**Compiler's notes.** Former § 26-206 was repealed. See Compiler's notes, § 26-201.

The bracketed reference "26-604" in subsection (2) was inserted by the compiler. Section

26-503 which provided for the payment of dividends from net profits has been repealed and the subject matter is now dealt with in § 26-604.

**26-207. Bylaws.** — Every banking corporation formed under the bank act must, within thirty (30) days after the issuance of its certificate of incorporation, adopt a code of bylaws as provided in the Idaho Business Corporations Act. A copy of all bylaws and of any subsequent amendments thereto and a copy of the bylaws as amended must be mailed by certified mail return receipt requested to the department within twenty (20) days after the adoption thereof, and no such bylaw or amendment shall be effective until so mailed. [I.C., § 26-207, as added by 1979, ch. 41, § 2, p. 62.]

**Compiler's notes.** Former § 26-207 was repealed. See Compiler's notes, § 26-201.

**Cross ref.** Acknowledgments, § 55-701 et seq.

Publication requirements, § 60-109.

Savings and loan associations, §§ 26-1801 — 26-1946.

**Collateral References.** 9 C.J.S., Banks and Banking, § 56.

**26-208. Place of meetings.** — All meetings of stockholders of a bank shall be held in the community of its principal place of business within this state. When so provided in the articles of incorporation or bylaws, or by resolution of the board of directors, regular or special meetings of the board of directors or the executive committee may be held for the transaction of any business of the bank at any other place within the state of Idaho provided that the director may approve meetings of the board of directors outside of the state of Idaho. [I.C., § 26-208, as added by 1979, ch. 41, § 2, p. 62.]

**Compiler's notes.** Former § 26-208 was repealed. See Compiler's notes, § 26-201.

**26-209. Time of annual meeting.** — The annual meeting of stockholders of a bank shall be held each year in the month of January, February, March or April. Every bank shall, by bylaw, fix the day in such month for its annual meeting. [I.C., § 26-209, as added by 1979, ch. 41, § 2, p. 62.]

**Compiler's notes.** Former § 26-209 was repealed. See Compiler's notes, § 26-201.

**Collateral References.** 9 C.J.S., Banks and Banking, §§ 70, 473.

**26-210. Stockbook.** — A book shall be provided and kept by every bank in which shall be entered the names and residences of the stockholders thereof, the number of shares held by each, the time when such person became a stockholder, and also all transfers of stock, stating the time when made, the number of shares and by whom transferred. In all actions, suits and proceedings, said books shall be prima facie evidence of the facts therein stated.

The president, cashier or corporate secretary of every bank shall cause to be kept at all times in the principal place of business of the bank a full and correct list of the names and residences of all the shareholders. Such list shall be subject to the inspection of any stockholder of the bank and a stockholder may obtain a copy of such list upon paying the cost of the reproduction of the list. [I.C., § 26-210, as added by 1979, ch. 41, § 2, p. 62.]

**Compiler's notes.** Former § 26-210 was repealed. See Compiler's notes, § 26-201.

**Collateral References.** 10 Am. Jur. 2d, Banks and Financial Institutions, § 302.

**26-211. Stock-transfers.** — (1) The shares of stock of a bank shall be deemed personal property and shall be transferred on the books of the bank in such manner as the bylaws thereof shall direct.

(2) All transfer [transfers] of seven percent (7%) or more of the outstanding stock of a bank by sale, gift or otherwise shall be reported to the director thirty (30) days prior to such transfer and shall be approved by the director prior to such transfer. The director may disapprove a transfer of stock if he finds that the transferee has been removed from a position as a director, officer or employee of a bank or other financial institution pursuant to an order of a state or federal agency, has been convicted of a felony or if in his opinion the transferee does not satisfy the requirements of a stockholder, director or officer as set out in section 26-202, Idaho Code. The provisions of this subsection shall not apply to a voting trust existing prior to July 1, 1978.

(3) All transfers of stock shall be certified by the president of the bank or secretary of the board of directors to the department within twenty (20) days after such transfer. [I.C., § 26-211, as added by 1979, ch. 41, § 2, p. 62; am. 1980, ch. 132, § 1, p. 291.]

**Compiler's notes.** Former § 26-211 was repealed. See Compiler's notes, § 26-201.

The bracketed word "transfers" in the first sentence of subsection (2) was inserted by the compiler.

Section 2 of S. L. 1980, ch. 132 declared an emergency. Approved March 24, 1980.

**Collateral References.** 10 Am. Jur. 2d, Banks and Financial Institutions, § 298.

9 C.J.S., Banks and Banking, §§ 56-59, 86-90.

Execution on, or attachment of, national bank stock. 1 A.L.R. 653.

President's or vice-president's representation as to stock. 1 A.L.R. 700; 67 A.L.R. 970.

Reduction of capital stock and distribution

of capital assets upon reduction. 44 A.L.R. 11; 35 A.L.R.2d 1149.

Insolvency, fraud, or illegality in transfer as affecting liability of transferor of bank stock. 35 A.L.R. 2d 1149; 86 A.L.R. 57.

Books, failure to enter transfer of stock on, as affecting liability of transferor for calls or assessments. 45 A.L.R. 137; 60 A.L.R. 112; 104 A.L.R. 638.

Fraud inducing subscription or purchase of stock as defense against statutory superadded liability. 51 A.L.R. 1203.

Debt of stockholder as ground for refusal to register transfer of stock where transfer is by operation of law. 65 A.L.R. 220.

Validity of restriction on alienation or



transfer of stock. 22 A.L.R. 4th 1229; 61 A.L.R.2d 1318.

Assessment, sale or surrender of stock for sale to pay, as relieving stockholder from further liability. 66 A.L.R. 436.

President's or vice-president's authority to purchase stock. 67 A.L.R. 979.

Infant, liability as stockholder of one purchasing stock for. 69 A.L.R. 661.

Infant, liability as stockholder of one transferring stock to. 69 A.L.R. 661.

Assignability or sale of stockholder's statutory liability. 82 A.L.R. 1285; 159 A.L.R. 1114.

Character of bank within constitutional or statutory provision imposing additional liability on stockholders. 82 A.L.R. 1356.

Exclusiveness of statutory remedy of sale or

forfeiture of stock to enforce liability for assessment. 83 A.L.R. 892.

Transfer of stock to bank issuing it as releasing transferor from stockholders' statutory added liability. 86 A.L.R. 72.

Ultra vires, invalid, or irregular issue of stock as affecting statutory added liability of its holders. 86 A.L.R. 816.

Federal income tax, deductibility of bank stock taxes in computing. 92 A.L.R. 870.

Closing of bank or appointment of receiver therefor, transfer of stock after, as affecting statutory added liability. 103 A.L.R. 689.

Indemnity to vendor of bank stock against future calls or assessments, implied obligation of purchaser as to. 141 A.L.R. 1351.

**26-212. Right of examination by stockholder.** — No stockholder of any bank who is not a director shall have the right to inspect the books and records of such bank showing its transactions with any of its customers but any such stockholder shall have the right to inspect, during business hours, the daily statement showing the general assets and liabilities of such bank. [I.C., § 26-212, as added by 1979, ch. 41, § 2, p. 62.]

**Compiler's notes.** Former § 26-212 was repealed. See Compiler's notes, § 26-201.

**Collateral References.** 10 Am. Jur. 2d, Banks and Financial Institutions, §§ 311-313, 321.

9 C.J.S., Banks and Banking, § 79.

Inspection of books and records by stockholders. 22 A.L.R. 80; 43 A.L.R. 783; 59 A.L.R. 1373; 80 A.L.R. 1502; 174 A.L.R. 262.

**26-213. Board of directors — Election, meetings, duties, liabilities, oath, removal — Officers — Election and bond.** — (1) The affairs, business and property of a bank shall be managed and controlled by a board of not less than five (5) directors, who shall be elected by the stockholders at their regular stated annual meetings. A majority of said directors shall be residents of the state of Idaho.

(2) No person shall be eligible to serve as a director of any bank organized or existing under the laws of this state, unless he shall be the owner in his own right of unhypothecated common stock of the bank in the amount of at least five hundred dollars (\$500) par value. One (1) or more of the directors of a bank, the majority of the common stock of which is owned by a bank holding company, may satisfy the requirement of this subsection by owning in his own right at least five hundred dollars (\$500) of the unhypothecated common stock of the bank holding company, either the par value or the book value.

(3) Any vacancy in the board of directors shall be filled by the board, and any directors so appointed shall hold office until the next annual meeting of stockholders. The board of directors shall immediately following each annual meeting of stockholders organize and elect a president, vice-president and cashier, who may also be the secretary and treasurer of the bank, and such other officers as shall be provided for in the bylaws, and shall fix the salary of all officers and employees or delegate such authority to its managing officer or officers. Directors of every bank shall hold at least ten



(10) meetings per year; provided, no more than sixty-five (65) days may elapse between board of directors meetings, and complete records of such meetings shall be entered in the minute book and signed by both the chairman and the secretary. The director may approve, upon written application, a reduction in the number and frequency of directors' meetings.

(4) Whenever a vote is taken upon any matter, a record shall be kept and entered in the minutes of those voting in the affirmative and those voting in the negative. At every meeting it shall be the duty of the directors to familiarize themselves with loans and investments made since the previous regular meeting and any director may request a listing of all loans made since the previous regular meeting. It shall be the duty of the president and cashier to furnish such information to the directors. The directors shall familiarize themselves with the existing liabilities to the bank of every officer and director of their bank at least once during each calendar year. The minutes of the meeting shall record the approval or disapproval of loans, investments and liabilities of officers. Each officer and director who borrows money from the bank shall submit his personal financial statement to the chief executive officer of the bank at least once during each calendar year and such financial statements shall be made available to federal or state regulatory agencies upon request by the agency.

(5) Any director, officer or person who shall participate in any violation of the laws of this state relative to banks or banking, shall be liable for all damages which said bank, its stockholders, depositors, or creditors shall sustain in consequence of such violation. It shall be the duty of every director of a bank personally to attend all meetings of the board of directors unless unavoidably detained therefrom. Any director who shall habitually absent himself from such meeting shall be deemed to have participated in any violation of law that may have occurred in his absence, and he shall not be permitted to set up such absence as a defense thereto.

(6) Every director shall take and subscribe an oath that he will diligently and honestly perform his duty in such office and will not knowingly violate or permit a violation of any provisions of the bank act, and such oath of office shall be transmitted to and filed with the department of finance. A director may be removed from office at any time for violation of his oath of office by the affirmative vote of two-thirds ( $\frac{2}{3}$ ) of the entire board, exclusive of the director to be removed.

(7) Every active officer and employee of any bank in this state shall furnish a surety bond in the penal sum of fifty thousand dollars (\$50,000) to the bank by which he is employed for the faithful performance of his duties, executed by a surety company authorized to do business in the state of Idaho as a surety. In lieu of the individual surety bonds required by this section, a bank may provide a bankers blanket or financial institution bond in a minimum amount of two hundred fifty thousand dollars (\$250,000). The conditions of such bond, whether the instrument so describes the conditions or not, shall be that the principal shall protect the obligee against any loss or liability that the obligee may suffer or incur by reason of the acts of dishonesty of the principal.

(8) In lieu of the bonds required in subsection (7) of this section, a bank may, with the approval of the director of the department of finance, provide

to the director a certificate of deposit issued by any other bank in the state of Idaho. The principal amount of the certificate of deposit shall be payable to the director and shall be in an amount to be determined by the director, but not less than two hundred fifty thousand dollars (\$250,000). The interest on the certificate of deposit shall be payable to the bank providing the certificate of deposit to the director. The certificate of deposit shall be maintained at all times the bank is authorized to do business under this chapter, and for a period of time thereafter to be determined by the director, but not to exceed three (3) years.

(9) Every bank shall provide adequate insurance protection or indemnity against robbery and burglary and other similar insurable losses.

(10) All surety bonds shall be approved by and filed with the directors. The directors or the director may require an increase of the amount of any such bond whenever either the directors or the director deem necessary for the better protection of the bank. [I.C., § 26-213, as added by 1979, ch. 41, § 2, p. 62; am. 1986, ch. 316, § 1, p. 316; am. 1987, ch. 293, § 1, p. 622; am. 1991, ch. 145, § 1, p. 344; am. 1993, ch. 53, § 1, p. 137.]

**Compiler's notes.** Former § 26-213 was repealed. See Compiler's notes, § 26-201.

Sections 46, 48 of S.L. 1925, ch. 133 are compiled as §§ 26-801 and 26-301, respectively.

Section 2 of S.L. 1993, ch. 53 is compiled as § 26-309.

Section 2 of S.L. 1987, ch. 293 declared an emergency. Approved April 3, 1987.

**Cross ref.** Civil and criminal penalties, § 26-1201 et seq.

Receiving deposits when insolvent, criminal liability of owner or officer, § 26-1003.

Refusal of officer to submit books to department of finance, § 26-1103.

Savings and loan associations, §§ 26-1801 — 26-1946.

**Sec. to sec. ref.** This section is referred to in §§ 26-202 — 26-204, and 26-1811.

#### ANALYSIS

Liability for acts of officers.

Power of director.

Removal.

Scope of liability.

Special meeting to remove.

#### Liability for Acts of Officers.

Bank is not liable for fraudulent acts of officer acting in his personal capacity, where bank is not acting in privity with such officer. *Smith v. Wallace Nat'l Bank*, 27 Idaho 441, 150 P. 21 (1915).

A director is not liable for the wrongful acts of officers, agents, or employees of a corporation where he has not participated in or ratified the act. *Eliopoulos v. Knox*, 123 Idaho 400, 848 P.2d 984 (Ct. App. 1992).

#### Power of Director.

The power given to the commissioner (now

director) to order the removal of a bank director, officer, or employee under this section is not absolute, since the directors under penalty of civil liability for loss may refuse to obey the order of removal by the commissioner (now director). *Doolittle v. Morley*, 77 Idaho 366, 292 P.2d 476 (1956).

#### Removal.

The removal of the board of directors by a vote of the stockholders of a banking institution at a special meeting called for that purpose was not invalid on the ground that a vacancy in the board could only be filled by the board of directors since the control of the removal of a board of directors of a banking corporation under the provisions of the business corporation law is vested in the stockholders. *Doolittle v. Morley*, 77 Idaho 366, 292 P.2d 476 (1956).

The calling of a special meeting of the stockholders of a banking corporation by the holder of more than 50% of the outstanding stock for consideration of removal of the board of directors, and the removal of the board of directors by a vote of two-thirds of the outstanding shares was valid, since there was a compliance with the articles of incorporation and the business corporation law. *Doolittle v. Morley*, 77 Idaho 366, 292 P.2d 476 (1956).

Directors of a bank can be removed at a special meeting of the stockholders called under the general business corporation law. *Byrne v. Morley*, 78 Idaho 172, 299 P.2d 758 (1956).

#### Scope of Liability.

There is nothing in the Idaho Banking Act's stated purpose or its statutory scheme to suggest that it was designed to protect borrowers; the liability for violations of the Act



are limited to damages sustained by the bank, its stockholders, depositors and creditors. *Eliopoulos v. Knox*, 123 Idaho 400, 848 P.2d 984 (Ct. App. 1992).

#### **Special Meeting to Remove.**

The calling of a special meeting of the stockholders of a banking corporation by the holder of more than 50% of the outstanding stock for consideration of removal of the board of directors, and the removal of the board of directors by a vote of two-thirds of the outstanding shares was valid, since there was a compliance with the articles of incorporation and the business corporation law. *Doolittle v. Morley*, 77 Idaho 366, 292 P.2d 476 (1956).

Directors of a bank can be removed at a

special meeting of the stockholders called under the general business corporation law. *Byrne v. Morley*, 78 Idaho 172, 299 P.2d 758 (1956).

**Collateral References.** 10 Am. Jur. 2d, Banks and Financial Institutions, §§ 329, 330, 333-335, 338, 339, 409-425.

9 C.J.S., Banks and Banking, §§ 97-113, 122-124, 126, 227-229, 481.

Bank president's or vice-president's power as affected by adverse interest. 1 A.L.R. 699; 67 A.L.R. 970.

Cashier as employee entitled to lien for wages. 111 A.L.R. 1454; 142 A.L.R. 362.

Defalcations by executive officer or employee, liability of directors for. 25 A.L.R.3d 941.

**26-214. Power of banks to grant options to purchase or sell shares of its stock to its employees.** — (1) Any bank may grant options to purchase, sell or enter into agreements to sell, shares of its stock to its employees whether or not such transactions qualify for special tax treatment under the Internal Revenue Code of 1954 as defined in section 63-3004, Idaho Code, and regulations promulgated thereunder, provided that the following conditions are met:

(a) Application for approval shall be made to the director of the department of finance in the form of a letter accompanied by the following information:

1. Description of all material provisions of the plan.
2. Proposed notice of stockholders' meeting, proxy and proxy statement.
3. The number of shares of authorized but unissued stock to be allocated to the plan.
4. Proposed amendments, if any, to articles of incorporation creating authorized but unissued stock and eliminating preemptive rights as to the shares reserved under the plan.

(b) The plan is administered by a committee, none of whose members may participate in the plan;

(c) The number of shares allocable to any person under the plan is reasonable in relation to the purpose of the plan and the needs of the bank; and

(d) In the case of a stock option plan, the number of shares subject to the plan is not unreasonable in relation to the bank's capital structure and anticipated growth.

(2)(a) Employees' stock option and stock purchase plans or agreements may provide that options may be exercisable or that shares may be purchased on any business day. Stock certificates representing the shares purchased pursuant to the exercise of options may be validly issued to such purchasers on receipt of the purchase price.

(b) The increase in capital represented by stock certificates issued pursuant to this section will not be applicable for the purposes of permitted investment in banking premises, permitted indebtedness, lending limits, branches, banking facilities and other like purposes until it has been duly



paid in as part of the capital of such bank. [I.C., § 26-214, as added by 1979, ch. 41, § 2, p. 62.]

**Compiler's notes.** Former § 26-214 was repealed. See Compiler's notes, § 26-201.

**Cited in:** *Byrne v. Morley*, 78 Idaho 172, 299 P.2d 758 (1956).

**Cross ref.** General Business Corporations, § 30-1-120 et seq.

**26-215. Federal reserve — Membership.** — Any bank shall have the power to subscribe to the capital stock and become a member of a federal reserve bank.

Any bank incorporated under the laws of this state which is or which becomes a member of a federal reserve bank is, by the bank act, vested with all powers conferred upon member banks of the federal reserve banks by the terms of the Federal Reserve Act as fully and completely as if such powers were specifically enumerated and described herein. All such powers shall be exercised subject to all restrictions and limitations imposed by the Federal Reserve Act, or by regulations of the Federal Reserve Board, made pursuant thereto. The right of the legislature to revoke or to amend the powers herein converted is, however, expressly reserved.

Compliance on the part of any such bank with the reserve requirements of the Federal Reserve Act shall be held to be in full compliance with those provisions of the laws of this state which require banks to maintain cash balances in their vaults or with other banks, and no such bank shall be required to carry or maintain reserve other than such as is required under the terms of the Federal Reserve Act. Any such bank shall continue to be subject to the supervision and examinations required by the laws of this state, except that the Federal Reserve Board shall have the right, if it deems necessary, to make examinations; and the authorities of this state having supervision over such bank may disclose to the Federal Reserve Board or to examiners duly appointed by it, all information in reference to the affairs of any bank which has become or desires to become a member of a federal reserve bank. [I.C., § 26-215, as added by 1979, ch. 41, § 2, p. 62.]

**Compiler's notes.** Former § 26-215 was repealed. See Compiler's notes, § 26-201.

The Federal Reserve Act referred to in this section is compiled throughout title 12 of the United States Code.

**Cross ref.** Savings and loan associations,

§§ 26-1801 — 26-1946.

**Sec. to sec. ref.** This section is referred to in § 26-107.

**Collateral References.** 9 C.J.S., Banks and Banking, § 829.

**26-216. Custodial accounts.** — Any bank, not having trust powers, may act as custodian, and may receive reasonable compensation for so acting, of any custodial account created or organized in the United States and forming part of a stock bonus, pension, or profit sharing plan which qualifies or qualified for specific tax treatment under section 401(d), section 403(b) or section 408(a) of the Internal Revenue Code of 1954 as defined in section 63-3004, Idaho Code, if the funds of such trust are invested only in savings accounts or deposits in such bank or in obligations or securities issued by such bank. All funds held in such custodial capacity by any such bank may be commingled for appropriate purposes of investment, but

individual records shall be kept by the custodian for each participant and shall show in proper detail all transactions engaged in under the authority of this section. [I.C., § 26-216, as added by 1979, ch. 41, § 2, p. 62.]

**Compiler's notes.** Former § 26-216 was repealed. See Compiler's notes, § 26-201.      referred to in this section see 26 U.S.C., §§ 401(d), 403(b) and 408(a).  
For sections 401(d), 403(b) and 408(a) re-

**26-217. Banks empowered to comply with requirements for federal deposit insurance.** — Any banking institution now or hereafter organized under the laws of this state is hereby empowered, on the authority of its board of directors, or a majority thereof, to enter into such contracts, incur such obligations and generally to do and perform any and all such acts and things whatsoever as may be necessary or appropriate in order to take advantage of any and all memberships, loans, subscriptions, contracts, grants, rights, or privileges, which may at any time be available or enure to banking institutions or to their depositors, creditors, stockholders, conservators, receivers or liquidators, by virtue of those provisions of section 8 of the federal "Banking Act of 1933" (§ 12B of the Federal Reserve Act, as amended), which establish the Federal Deposit Insurance Corporation and provide for the insurance of deposits, or of any other provisions of that or of any other act or resolution of congress to aid, regulate or safeguard banking institutions and their depositors, including any amendments of the same or any substitutions therefor; also, to subscribe for and acquire any stock, debentures, bonds or other types of securities of the Federal Deposit Insurance Corporation and to comply with the lawful regulations and requirements from time to time issued or made by such corporation. [I.C., § 26-217, as added by 1979, ch. 41, § 2, p. 62.]

**Compiler's notes.** For § 8 of the federal Banking Act of 1933 see 12 U.S.C., chapters 2, 3 and 6.      The words in parentheses so appeared in the law as enacted.

## CHAPTER 3

### BANK BRANCHES

#### SECTION.

- 26-301. Branch banks — Requirements.
- 26-302. Establishment of bank facilities authorized.
- 26-303. Section concerning branch banks unaffected — Bank facility construed.
- 26-304. Powers limited.
- 26-305. Responsibilities of bank.

#### SECTION.

- 26-306. Mobile or temporary facility.
- 26-307. Addition to capital structure of bank.
- 26-308. Bank facility to have priority.
- 26-309. Customer-bank communication terminal.
- 26-310. Investigation fee.
- 26-311. Branches following relocation.
- 26-312 — 26-315. [Repealed.]

**26-301. Branch banks — Requirements.** — No bank shall maintain any branch bank except as hereinafter provided. Any bank organized under the laws of Idaho may, upon written application to and with the approval of the director, establish and operate branch banks for the transaction of its business at any location. [I.C., § 26-301, as added by 1979, ch. 41, § 2, p. 62; am. 1995, ch. 99, § 3, p. 299.]



**Compiler's notes.** Former § 26-301, which comprised S.L. 1925, ch. 133, § 48, p. 190; I.C.A., § 25-301, was repealed by S.L. 1951, ch. 71, § 13.

Sections 2 and 4 of S.L. 1995, ch. 99 are compiled as §§ 26-107 and 26-710, respectively.

**Cross ref.** Definitions, § 26-106.

Limitations on loans, investments, and

practices, § 26-701 et seq.

Supervision by department of finance, § 26-1101 et seq.

**Sec. to sec. ref.** This chapter is referred to in §§ 26-1111, 26-1219.

Sections 26-301 — 26-309 are referred to in § 26-107.

This section is referred to in §§ 26-303, 26-1217.

**26-302. Establishment of bank facilities authorized.** — Any bank may, with the prior approval of the director, establish and maintain a bank facility at any point in the state of Idaho.

A bank facility when so established shall have the power to:

- (a) take applications for loans, accept deposits, issue receipts therefor, and transmit such deposits to the bank maintaining such facility;
- (b) carry and disburse cash change, cash checks, accept checks;
- (c) issue checks drawn on or certified by the bank operating the facility, rent safe deposit boxes, transfer funds between existing bank accounts, accept loan payments, disburse cash on prearranged credit plans; and carry out such other transactions as the director may allow by regulation.

The director of the department of finance shall not approve or permit the establishment of a facility when in his judgment the establishment of such facility would tend to restrict competition. [I.C., § 26-302, as added by 1979, ch. 41, § 2, p. 62.]

**Compiler's notes.** Former § 26-302, 190; I.C.A., § 25-302, was repealed by S.L. which comprised S.L. 1925, ch. 133, § 49, p. 1951, ch. 71, § 13.

**26-303. Section concerning branch banks unaffected — Bank facility construed.** — The sections of this chapter relating to bank facilities shall not be construed to modify or repeal section 26-301, Idaho Code, and the term bank facility as used in the bank act shall not be construed to mean branch bank. [I.C., § 26-303, as added by 1979, ch. 41, § 2, p. 62.]

**Compiler's notes.** Former § 26-303, 190; I.C.A., § 25-303, was repealed by S.L. which comprised S.L. 1925, ch. 133, § 50, p. 1951, ch. 71, § 13.

**26-304. Powers limited.** — Bank facilities operating under the bank act shall not exercise any powers not herein expressly granted to such facilities by this chapter or by regulations of the director. [I.C., § 26-304, as added by 1979, ch. 41, § 2, p. 62.]

**Compiler's notes.** Former §§ 26-304 — §§ 1-7, p. 105; am. 1973, ch. 6, § 1, p. 12 were 26-310 which comprised S.L. 1951, ch. 71, repealed by S.L. 1979, ch. 41, § 1.

**26-305. Responsibilities of bank.** — Any bank establishing a bank facility shall be responsible for all transactions of the facility, and for keeping accounts and books covering all business transactions of the facility at its nearest branch bank or as the director shall, by regulation, require. [I.C., § 26-305, as added by 1979, ch. 41, § 2, p. 62.]



**Compiler's notes.** Former § 26-305 was repealed. See Compiler's notes, § 26-304.

**26-306. Mobile or temporary facility.** — Mobile facilities or temporary facilities may be established with the approval of the director and under such conditions as the director may establish by regulation. Mobile facilities may be operated only in communities in which no bank, branch bank or bank facility exists. [I.C., § 26-306, as added by 1979, ch. 41, § 2, p. 62.]

**Compiler's notes.** Former § 26-306 was repealed. See Compiler's notes, § 26-304.

**26-307. Addition to capital structure of bank.** — The director shall not approve an application for a branch bank, bank facility or mobile facility until the bank making the application has added to its paid-in common stock.

- (a) Thirty-five thousand dollars (\$35,000) for each branch bank to be established,
- (b) Twenty-five thousand dollars (\$25,000) for each facility to be established, and
- (c) Twenty thousand dollars (\$20,000) for each mobile facility to be established.

If the paid-in common stock of the bank applying for the facility amounts to at least the statutorily required minimum for charter and thirty-five thousand dollars (\$35,000) for each branch, twenty-five thousand dollars (\$25,000) for each facility and twenty thousand dollars (\$20,000) for each mobile facility including the branch, facility or mobile facility applied for, the bank shall not be required to add additional capital for the branch, facility or mobile facility for which the application was made. [I.C., § 26-307, as added by 1979, ch. 41, § 2, p. 62.]

**Compiler's notes.** Former § 26-307 was repealed. See Compiler's notes, § 26-304.

**26-308. Bank facility to have priority.** — If a bank is operating a bank facility or mobile facility in a community for which a branch bank is requested by another bank, the director shall not approve the bank branch application until he has allowed a reasonable opportunity to the bank operating the bank facility to convert the facility or mobile facility to a branch bank. [I.C., § 26-308, as added by 1979, ch. 41, § 2, p. 62.]

**Compiler's notes.** Former § 26-308 was repealed. See Compiler's notes, § 26-304.

**26-309. Customer-bank communication terminal.** — A bank may make available for use by its customers one (1) or more electronic devices or machines through which the customer may communicate to the bank a request to withdraw money either from his account or from a previously authorized line of credit, or an instruction to receive or transfer funds for the

customer's benefit. The device may receive or dispense cash in accordance with such a request or instruction, subject to verification on line or off line by the bank. Any transactions initiated through such a device shall be subject to verification by the bank either by direct wire transmission or otherwise. Such facilities may be unmanned or manned.

A person may perform as would a device so long as the person does not perform any functions not specifically authorized by this section.

These devices shall be designated as a customer-bank communication terminal (CBCT). The use of a CBCT at locations other than the main office or a branch office of the bank does not constitute branch banking. A bank shall provide insurance protection under its bonding program for transactions involving such devices.

(1) The establishment and use of a CBCT is subject to the following limitations:

(a) Written notice must be given to the director's office no less than thirty (30) days before any CBCT is put into operation. Any bank presently utilizing a CBCT shall comply with the notice requirements within thirty (30) days. Such notice shall describe with regard to the communication system:

1. the location;
2. a general description of the area where located and the manner of installation;
3. the manner of operation;
4. the kinds of functions which will be performed;
5. whether the CBCT will be shared, and, if so, under what terms and with what other institutions and their location;
6. the manufacturer and, if owned, the purchase price or, if leased, a copy of the lease;
7. the distance from the nearest banking office and from the nearest similar CBCT of the reporting bank; and
8. the distance from the nearest banking office and nearest CBCT of another commercial bank, which will share the facility, and the name of such other bank or banks.

(b) The functions of the CBCT shall be limited to:

1. the receiving of deposits;
2. the cashing of checks;
3. the dispensing of cash;
4. payment of loan proceeds on a prearranged line of credit;
5. the communication of other such information directly related to the customer's account; and
6. receiving loan payments;
7. any other function authorized to be performed by national banks and approved by the director.

(c) Arrangements may be made at the CBCT for the placing or installation of a receptacle in which a customer may place packaged communication intended for the bank.

(d) The CBCT shall be a communication service available only to customers of the bank or other financial institution which the management of the bank may approve.

(e) The CBCT shall not be advertised as full service banking or as performing anything other than activities set out in subsection (1)(b) of this section.

(2) To the extent consistent with the anti-trust laws, banks are required to share unmanned CBCTs at a reasonable fee with one (1) or more other financial institutions if requested by the other financial institution. A bank may connect CBCTs with a regional or national consumer funds transfer system for the purpose of handling financial transactions of the kind authorized by subsection (1)(b) of this section. An agreement to share CBCT usage may not prohibit, limit or restrict the right of a bank to charge a customer any fee allowed by state or federal law or require the bank to limit or waive its rights or obligations under the provisions of this section. No bank may impose a fee for the use of a CBCT by those using an access device not issued by that bank unless such fee is clearly disclosed to the customer at a time and in a manner that allows the user to terminate or cancel the transaction without incurring the fee. The fee may be in addition to any other charges imposed on the user by the operator of any consumer funds transfer system or by the user's own financial institution.

(3) The director may issue a cease and desist order upon a finding that a bank utilizing a CBCT is doing so in a manner not specifically authorized in this section.

(4) This section and regulations adopted pursuant to it shall be deemed to apply to national banks operating customer-bank communication terminals and for the purpose of the bank act a financial institution shall mean any state or federally chartered commercial bank, savings and loan association or credit union authorized by the department of finance or a comparable federal agency to do business in the state of Idaho. [I.C., § 26-309, as added by 1979, ch. 41, § 2, p. 62; am. 1993, ch. 52, § 1, p. 133; am. 1993, ch. 53, § 2, p. 137.]

**Compiler's notes.** Former § 26-309 was repealed. See Compiler's notes, § 26-304.

The words in parentheses so appeared in the law as enacted.

This section was amended by two 1993 acts — ch. 52, § 1, effective March 17, 1993, and ch. 53, § 2, effective July 1, 1993 — which do not appear to conflict and have been compiled together.

The amendment by ch. 52, § 1, in the first sentence of the first paragraph added "(1)" following "by its customers one"; in the first sentence of subdivision (2) added "(1)" following "a reasonable fee with one"; near the end of subdivision (3) substituted "in" for "by" preceding "this section"; deleted former subdivisions (4) and (5); and redesignated former subdivision (6) as present subdivision (4).

The amendment by ch. 53, § 2, in the first sentence of the first paragraph added "(1)" following "by its customers one"; added a semicolon at the end of subdivision (1)(b)6; added subdivision (1)(b)7; in the first sentence of subdivision (2) added "(1)" following "a reasonable fee with one"; and added the second through fifth sentences of subdivision (2).

Section 2 of S.L. 1993, ch. 52 is compiled as § 26-716.

Sections 1 and 3 of S.L. 1993, ch. 53 are compiled as §§ 26-213 and 26-701, respectively.

Section 5 of S.L. 1993, ch. 52 declared an emergency. Approved March 17, 1993.

**Cited in:** Idaho v. Security Pac. Bank Idaho, 800 F. Supp. 922 (D. Idaho 1992).

**26-310. Investigation fee.** — Any banking corporation, applying to the director for authority to establish a branch banking office or bank facility or mobile facility, shall pay to the department of finance a fee based upon the cost of the investigation of said application; provided, that such fee shall not



be less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000). [I.C., § 26-310, as added by 1979, ch. 41, § 2, p. 62.]

**Compiler's notes.** Former § 26-310 was repealed. See Compiler's notes, § 26-304.

**26-311. Branches following relocation.** — Notwithstanding any other provision of law, a bank that relocates its main office from another state into Idaho pursuant to 12 U.S.C. 30, 12 U.S.C. 36, and section 26-1101, Idaho Code, shall continue to be authorized to establish and operate branches within this state as provided in section 26-301, Idaho Code, even if, after its relocation into Idaho, its home state as defined by section 26-1603, Idaho Code, becomes a state other than Idaho. [I.C., § 26-311, as added by 1997, ch. 225, § 2, p. 661.]

**Compiler's notes.** Sections 1 and 3 of S.L. 1997, ch. 225 are compiled as §§ 26-107 and 26-1104 respectively. **Sec. to sec. ref.** This section is referred to in §§ 26-107 and 26-1604.

## 26-312 — 26-315. Continuation of corporate entity — Sale of all assets — Dissenting stockholders — Nonconforming assets or business — Book value of assets. [Repealed.]

**Compiler's notes.** These sections which comprised S.L. 1951, ch. 71, §§ 8-12, p. 105, were repealed by S.L. 1979, ch. 41, § 1.

## CHAPTER 4

### BANK SERVICE CORPORATIONS

SECTION.	SECTION.
26-401. Definitions.	to discriminate — Burden of proof.
26-402. Investment in service corporation.	26-405. Prohibited activities.
26-403. Banks jointly holding stock — Effect of withdrawal by one bank.	26-406 — 26-408. [Repealed.]
26-404. Duty of bank service corporation not	

#### 26-401. Definitions. — As used in this section:

"Invest" includes any advance of funds to a bank service corporation, whether by the purchase of stock, the making of a loan, or otherwise, except a payment for rent earned, goods sold and delivered, or services rendered prior to the making of such payment;

"Applying bank" means a bank applying to a bank service corporation for bank services; and

"Stockholding bank" means a bank which owns stock of a bank service corporation. [I.C., § 26-401, as added by 1979, ch. 41, § 2, p. 62.]

**Compiler's notes.** Former §§ 26-401 — 26-405 which comprised S.L. 1925, ch. 133, §§ 18-22, p. 190; I.C.A., §§ 25-401 — 25-405, were repealed by S.L. 1979, ch. 41, § 1. **Organization and corporation powers of banks,** § 26-201 et seq.

**Cross ref.** Definitions, § 26-106. **Sec. to sec. ref.** This chapter is referred to in § 26-1111.

**26-402. Investment in service corporation.** — No limitation or prohibition otherwise imposed by any provision of the laws of the state of Idaho exclusively relating to banks shall prevent or prohibit any two (2) or more banks from investing not more than ten percent (10%) of the paid-in and unimpaired capital and unimpaired surplus of each of them in a bank service corporation. [I.C., § 26-402, as added by 1979, ch. 41, § 2, p. 62.]

**Compiler's notes.** Former § 26-402 was repealed. See Compiler's notes, § 26-401.

**26-403. Banks jointly holding stock — Effect of withdrawal by one bank.** — If stock in a bank service corporation has been held by two (2) banks, and one (1) of such banks ceases to utilize the services of the corporation and ceases to hold stock in it, and leaves the other as the sole stockholding bank, the corporation may nevertheless continue to function as such and the other bank may continue to hold stock in it. [I.C., § 26-403, as added by 1979, ch. 41, § 2, p. 62.]

**Compiler's notes.** Former § 26-403 was repealed. See Compiler's notes, § 26-401.

**26-404. Duty of bank service corporation not to discriminate — Burden of proof.** — Whenever a bank, referred to in this section as an "applying bank," subject to examination by either the department of finance of the state of Idaho, or a federal bank supervisory agency, applies for a type of bank service for itself from a bank service corporation which supplies the same type of bank services to another bank, and the applying bank is competitive with any bank, referred to in this section as a "stockholding bank," which holds stock in such corporation, the corporation must offer to supply such services by either:

(a) issuing stock to the applying bank and furnishing bank services to it on the same basis as to the other banks holding stock in the corporation, or

(b) furnishing bank services to the applying bank at rates no higher than necessary to fairly reflect the cost of such services, including the reasonable cost of the capital provided to the corporation by its stockholders, at the corporation's option, unless comparable services at competitive overall cost are available to the applying bank from another source, or unless the furnishing of the services sought by the applying bank would be beyond the practical capacity of the corporation. In any action or proceeding to enforce the duty imposed by this section, or for damages for the breach thereof, the burden shall be upon the bank service corporation to show such availability. [I.C., § 26-404, as added by 1979, ch. 41, § 2, p. 62.]

**Compiler's notes.** Former § 26-404 was repealed. See Compiler's notes, § 26-401.

**26-405. Prohibited activities.** — No bank service corporation may engage in any revenue producing activity other than the performance of bank services for banks and, to an extent not exceeding one-half (½) of its total activity, the performance of similar services for persons or organizations other than banks. [I.C., § 26-405, as added by 1979, ch. 41, § 2, p. 62.]

**Compiler's notes.** Former § 26-405, was repealed. See Compiler's notes, § 26-401.

**26-406 — 26-408. Board of directors — Election, meetings, duties, liabilities, oath — Officers — Election and bond — Removal of directors, officers, or employees — Powers of banks to grant options to purchase or sell shares of its capital stock to its employees. [Repealed.]**

**Compiler's notes.** These sections which comprised S.L. 1925, ch. 133, §§ 23, 24; I.C.A., §§ 25-406, 25-407; I.C., § 26-408, as added by 1970, ch. 253, § 11, p. 671, were repealed by S.L. 1979, ch. 41, § 1.

## CHAPTER 5

### BANK HOLDING COMPANIES

#### SECTION.

26-501. Definitions.  
26-502. Approval of bank holding company.  
26-503. Approval to acquire a bank.  
26-504. Existing bank holding company.  
26-505. Director of Finance — Reports — Requirements.  
26-506. Change in control.

#### SECTION.

26-507. Violation — Penalty.  
26-508. Removal of directors, officers, or employees.  
26-509. Engaging in unsafe or unsound practices — Cease and desist orders — Injunction.

**26-501. Definitions.** — As used in this chapter, unless the context otherwise requires:

- (1) "Bank" shall mean any bank chartered under this act.
- (2) "Company" shall mean any corporation, business trust, association, or similar organization but shall not include:
  - (a) an individual; or
  - (b) any corporation the majority of shares of which are owned by the United States or any state;
- (3) "Business trust" shall mean a business organization wherein a business or other property is conveyed to trustees who manage the business or other property for the benefit of the certificate or shareholders of the trust. Business trust shall not include a voting trust.
- (4) "Bank holding company" shall mean any company:
  - (a) Which directly or indirectly owns or controls twenty-four percent (24%) or more of the voting shares of a bank;
  - (b) Which controls in any manner the election of the majority of the directors of a bank; or
  - (c) For the benefit of whose shareholders or members twenty-four percent (24%) or more of the voting shares of a bank is held by trustees;



For the purposes of any proceeding under subsection (4)(b) of this section, there is a presumption that any company which directly or indirectly owns, controls or has power to vote less than five percent (5%) of the voting shares of a bank does not have control over that bank; and

(5) Notwithstanding the foregoing;

(a) No estate, trust, guardianship, or conservatorship or fiduciary thereof shall be a bank holding company by virtue of its ownership or control of shares of stock of a bank unless such trust is a business trust or a voting trust which by its terms or by law does not expire within ten (10) years from the effective date of the voting trust;

(b) No company shall be a bank holding company by virtue of its ownership or control of shares acquired by it in connection with its underwriting of bank shares and which are held only for such period of time as will permit the sale thereof on a reasonable basis; and

(c) No company shall be a bank holding company by virtue of its ownership or control of shares acquired and held in the ordinary course of securing or collecting a debt previously contracted in good faith and which are held only for such period of time as will permit the sale thereof on a reasonable basis. [I.C., § 26-501, as added by 1979, ch. 41, § 2, p. 62.]

**Compiler's notes.** Former §§ 26-501 — 26-504 which comprised S.L. 1925, ch. 133, §§ 26-28, p. 190; I.C.A., §§ 25-501 — 25-503; am. 1963, ch. 71, § 1, p. 263; am. 1973, ch. 109, § 1, p. 195; I.C., § 26-504, as added by 1973, ch. 109, § 2, p. 195 were repealed by S.L. 1979, ch. 41, § 1.

The words "this act" refer to S.L. 1979, ch. 41, compiled herein as §§ 26-101 — 26-1319.

**Cross ref.** Definitions, § 26-106.

Organization and corporation powers of banks, § 26-201 et seq.

Supervision by department of finance, § 26-1101 et seq.

**Sec. to sec. ref.** This chapter is referred to in §§ 26-1111, 26-2606.

This section is referred to in § 26-2613.

**Collateral References.** 9 C.J.S., Banks and Banking, §§ 23, 652.

**26-502. Approval of bank holding company.** — Every bank holding company hereafter formed shall register with the department of finance and receive the approval of the director to become a bank holding company. The director shall approve an application to form a bank holding company if he finds that the persons who are officers, directors or stockholders are of such character and fitness that a bank or banks acquired by the bank holding company will be operated in a safe, prudent and profitable manner. The application shall include such information with respect to the financial condition and operations, management, and intercompany relationships of the bank holding company and its subsidiaries and related matters, as the director may deem necessary or appropriate. The director may, in his discretion, accept copies of federal registration in lieu of state requirements. [I.C., § 26-502, as added by 1979, ch. 41, § 2, p. 62.]

**Compiler's notes.** Former § 26-502 was repealed. See Compiler's notes, § 26-501.

The name of the commissioner of finance has been changed to the director of the department of finance on the authority of S.L.

1974, ch. 286, § 1, S.L. 1974, ch. 40, § 3 (§ 67-2403) and S.L. 1974, ch. 24, § 21 (§ 26-107).

**Sec. to sec. ref.** This section is referred to in § 26-506.

**26-503. Approval to acquire a bank.** — A bank holding company shall apply to the department of finance and receive the approval of the department of finance prior to acquiring a bank. The application shall include such information with respect to the financial condition and operations, management and intercompany relationships of the bank to be acquired and the holding company as the director may deem necessary or appropriate. In considering an application to acquire a bank, the director shall consider at least:

- (1) The financial condition of the bank holding company and any banks already owned by the holding company;
- (2) The probable effect of the acquisition on the holding company, any banks already owned by the holding company and the bank which is to be acquired; and
- (3) The effect of the acquisition on competition in the providing of banking services. [I.C., § 26-503, as added by 1979, ch. 41, § 2, p. 62.]

**Compiler's notes.** Former § 26-503 was repealed. See Compiler's notes, § 26-501.

**Sec. to sec. ref.** This section is referred to in § 26-206.

#### DECISIONS UNDER PRIOR LAW

##### ANALYSIS

Receiver, recovery of dividends wrongfully paid.  
Stockholders' suit against directors.

##### **Receiver, Recovery of Dividends Wrongfully Paid.**

It is the duty of receiver of insolvent bank to recover for benefit of creditors dividends declared by directors and paid contrary to this provision. *McTamany v. Day*, 23 Idaho 95, 128 P. 563 (1912).

##### **Stockholders' Suit Against Directors.**

Stockholders have no right to sue directors in a federal court for maladministration where the corporation is in the hands of a state court receiver and the state court refuses permission to sue. *Klein v. Peter*, 284 F. 797 (8th Cir. 1922).

**Collateral References.** 9 C.J.S., Banks and Banking, § 60.

**26-504. Existing bank holding company.** — Each existing bank holding company shall register within one hundred eighty (180) days after July 1, 1979, and shall include such information with respect to the financial condition and operations, management, and intercompany relationships of the bank holding company and its subsidiaries, and related matters, as the director may deem necessary or appropriate. The director may, in his discretion, extend the time within which a bank holding company shall register, and accept copies of federal registration in lieu of state requirements. [I.C., § 26-504, as added by 1979, ch. 41, § 2, p. 62.]

**Compiler's notes.** Former § 26-504 was repealed. See Compiler's notes, § 26-501.

The name of the commissioner of finance has been changed to the director of the department of finance by the Code Commission

on the authority of S.L. 1974, ch. 286, § 1, S.L. 1974, ch. 40, § 3 (§ 67-2403) and S.L. 1974, ch. 24, § 21 (§ 26-107).

Section 3 of S.L. 1973, ch. 109 declared an emergency. Approved March 14, 1973.



**26-505. Director of Finance — Reports — Requirements.** — The director may require reports made under oath to be filed in the department of finance to keep it informed as to the operation of any bank holding company. The director may make examinations of each bank holding company and each subsidiary thereof under the provisions of section 26-1102, Idaho Code, the actual cost of which shall be assessed against and paid by such holding company. The director may accept reports of examination [examinations] made by the Federal Reserve Board, the Comptroller of the Currency, or the Federal Deposit Insurance Corporation in lieu of making an examination by the department. [I.C., § 26-505, as added by 1979, ch. 41, § 2, p. 62.]

**Compiler's notes.** The bracketed word "examinations" was inserted by the compiler.

**26-506. Change in control.** — All transfers of a major portion of the outstanding stock or trust certificates of a bank holding company by sale, gift, or otherwise shall be approved by the director prior to such transfer. For the purposes of this section, a major portion of the outstanding stock or trust certificates of a bank holding company is any number of any class of shares of a bank holding company the acquisition of which will result in a person acquiring the shares having voting control of the bank holding company. The director shall not approve a transfer of stock if he finds that the transferee has been removed from a position as a director, officer or employee of a bank holding company, a bank or other financial institution pursuant to an order of a state or federal agency. The director may disapprove a transfer of stock if in his opinion the transferee does not meet the requirements of a stockholder, director, or officer as set out in section 26-502, Idaho Code. [I.C., § 26-506, as added by 1979, ch. 41, § 2, p. 62.]

**26-507. Violation — Penalty.** — Any person who willfully violates any provision of this chapter shall be guilty of a felony. [I.C., § 26-507, as added by 1979, ch. 41, § 2, p. 62.]

**26-508. Removal of directors, officers, or employees.** — Any director, officer or employee of any bank holding company found by the director to be negligent, dishonest, reckless or incompetent, in his official duties shall be removed from office by the board of directors of such bank holding company on the written order of the director, and if the directors neglect or refuse to remove such director, officer, or employee, in the event any losses accrue to such bank holding company thereafter by reason of the negligence, dishonesty, recklessness or incompetency of such director, officer or employee, the written order of the director shall be deemed to be conclusive evidence of the negligence of the directors failing to act upon the same in any action brought against them, or any of them, for recovery of such losses. The directors [director], officer or employee affected by order of the director may petition the district court in the judicial district in which the bank is located to set aside the order of the director. Upon the filing of such petition the court shall have the jurisdiction to affirm, set aside, or modify the order of



the director. If the directors fail to [or] neglect to remove such director, officer or employee, and the director of the department of finance has reasonable cause to believe that the continued participation in the affairs of the bank holding company by the director, officer or employee will place the bank holding company in an unsafe or unsound condition, the director of the department of finance may apply to the district court for a temporary restraining order and injunction preventing the participation of the director, officer or employee in the affairs of the bank holding company. The findings of the director as to the facts, if supported by substantial evidence, shall be conclusive that the bank holding company director, officer or employee who is the subject of an order for removal by the director is or has been negligent, dishonest, reckless or incompetent in the performance of his duties. [I.C., § 26-508, as added by 1979, ch. 41, § 2, p. 62.]

**Compiler's notes.** The bracketed words "director" in the second sentence and "or" in the fourth sentence were inserted by the compiler.

**26-509. Engaging in unsafe or unsound practices — Cease and desist orders — Injunction.** — (1) If, in the opinion of the director, any bank holding company is engaging or has engaged, or the director has reasonable cause to believe that the bank holding company is about to engage in an unsafe or unsound practice in conducting the business of such bank holding company or a bank owned or controlled by the bank holding company or is violating or has violated, or the director has reasonable cause to believe that the bank holding company is about to violate a law, rule, or any condition imposed in writing by the director in connection with the granting of any application or other request by the bank holding company or any written agreement entered into with the director, the director may issue and serve upon the bank holding company a notice of charges in respect thereof. The notice shall contain a statement of the facts constituting the alleged violation or violations or the unsafe or unsound practice or practices, and shall fix a time and place at which a hearing will be held to determine whether an order to cease and desist therefrom should issue against the bank holding company. Such hearing shall be fixed for a date not earlier than twenty (20) days nor later than sixty (60) days after service of such notice unless an earlier or a later date is set by the department of finance at the request of the bank holding company. Unless the bank holding company shall appear at the hearing by a duly authorized representative, it shall be deemed to have consented to the issuance of the cease and desist order. In the event of such consent, or if upon the record made at the hearing, the director shall find that any violation or unsafe or unsound practice has occurred or will occur, the director may issue and serve upon the bank holding company an order to cease and desist from any such violation or practice. Such order may, by provisions which may be mandatory or otherwise, require the bank holding company and its directors, officers, employees, and agents to cease and desist from the same and further to take affirmative action to correct the conditions resulting from any such violation or practice.

(2) A cease and desist order shall become effective at the time specified therein and shall remain effective and enforceable as provided therein, except to such extent as it is stayed, modified, terminated, or set aside by action of the director or a reviewing court.

(3) Whenever the director shall determine that the violation or threatened violation or the unsafe unsound practice or practices, specified in the notice of charges served upon the bank holding company pursuant to paragraph (1) of this section, or the continuation thereof, is likely to cause insolvency or substantial dissipation of assets or earnings of a bank owned or controlled by the bank holding company or is likely to otherwise seriously prejudice the interests of such bank's depositors, the director may issue a temporary order requiring the bank holding company to cease and desist from any such violation or practice. Such order shall become effective upon service upon the bank holding company and, unless set aside, limited, or suspended by a court in proceedings, authorized by paragraph (2) of this section, shall remain effective and enforceable pending the completion of the administrative proceedings pursuant to such notice and until such time as the director shall dismiss the charges specified in such notice, or if a cease and desist order is issued against the bank, until the effective date of any such order.

(4) Within ten (10) days after the bank holding company concerned has been served with a temporary cease and desist order, the bank holding company may apply to the district court for the judicial district in which the home office of the bank holding company is located, for an injunction setting aside, limiting, or suspending the enforcement, operation, or effectiveness of such order pending the completion of the administrative proceedings pursuant to the notice of charges served upon the bank holding company under paragraph (1) of this section, and such court shall have jurisdiction to issue such injunction.

(5) In the case of violation or threatened violation of, or failure to obey, a temporary cease and desist order issued pursuant to paragraph (3) of this section, the director may apply to the district court within the jurisdiction of which the home office of the bank holding company is located, for an injunction to enforce such order, and if the court shall determine that there has been such violation or threatened violation or failure to obey, it shall be the duty of the court to issue an injunction. [I.C., § 26-509, as added by 1979, ch. 41, § 2, p. 62.]

## CHAPTER 6

### RESERVES, SURPLUS AND DIVIDENDS

#### SECTION.

26-601. Reserve.

26-601A. [Repealed.]

26-602. Diminution of reserve.

26-602A. [Repealed.]

#### SECTION.

26-603. Director of the department of finance  
— Reserve.

26-604. Dividends — Surplus.

26-605 — 26-615. [Repealed.]



**26-601. Reserve.** — Every bank, not a member of the Federal Reserve System, shall have on hand each day as a reserve, an amount equal to at least ten per cent (10%) of its net demand deposits and four per cent (4%) of its savings and time deposits. Said reserve shall be in cash in its vaults or held on deposit subject to check with any other bank or banks which shall have been approved by the director as reserve depositories and shall be computed biweekly in the following manner: on the basis of average daily net deposit balances and average daily cash in its vaults or held on deposit in reserve depositories subject to check during the prior biweekly period. Biweekly periods shall end at the close of business on days to be fixed by the director. Notwithstanding the above, upon an annual showing by a bank, not a member of the Federal Reserve System, that it is subject to the reserve requirements of the Federal Reserve Act, the director may waive the reserve requirements of this act.

Any bank which is or becomes a member of the Federal Reserve System, shall comply with the reserve requirements of the Federal Reserve act. [I.C., § 26-601, as added by 1979, ch. 41, § 2, p. 62; am. 1981, ch. 8, § 1, p. 15.]

**Compiler's notes.** Former §§ 26-601 — 26-604 which comprised S.L. 1925, ch. 133, §§ 29, 30, 32, p. 190; I.C.A., §§ 25-601, 25-602, 25-604; am. 1937, ch. 99, § 1, p. 143; am. 1943, ch. 37, § 1, p. 69; am. 1945, ch. 41, § 1, p. 52; am. 1947, ch. 48, § 1, p. 52; am. 1957, ch. 76, § 1, p. 123; am. 1961, ch. 84, § 1, p. 113; am. 1963, ch. 66, § 1, p. 254; am. 1965, ch. 36, § 1, p. 55; I.C., §§ 26-601A, 26-602A, 26-603 as added by 1970, ch. 253, §§ 2, 6, 9, p. 671; am. 1971, ch. 185, § 1, p. 860; am. 1977, ch. 216, § 1, p. 632, were repealed by S.L. 1979, ch. 41, § 1.

The words "this act" refer to S.L. 1979, ch.

41, which is compiled as §§ 26-601 — 26-604.

The Federal Reserve Act referred to in this section is compiled throughout title 12 of the United States Code.

**Cross ref.** Closing and liquidation of banks, § 26-1001 et seq.

Consolidation, sale and reorganization, § 26-901 et seq.

Definitions, § 26-106.

Supervision by department of finance, § 26-1101 et seq.

**Sec. to sec. ref.** This chapter is referred to in § 26-1111.

## **26-601A. Determination of limits of loans and investments of banks. [Repealed.]**

**Compiler's notes.** This section was repealed. See Compiler's notes, § 26-601.

**26-602. Diminution of reserve.** — (1) When the reserve of any bank falls below the amount required by section 26-601, Idaho Code, for a biweekly period, the bank shall immediately restore its reserve to the amount required by section 26-601, Idaho Code, and in addition:

(a) If a bank is deficient in reserve for two (2) nonconsecutive biweekly periods in a calendar year, the bank shall pay to the department of finance at the end of [the] second biweekly period a fine of three hundred dollars (\$300).

(b) If a bank is deficient in reserves for three (3) nonconsecutive biweekly periods in a calendar year, the bank shall pay to the department of finance at the end of the third biweekly period a fine equal to five percent (5%) of the dollar amount by which it was deficient in reserves for the third biweekly period or five hundred dollars (\$500), whichever is greater.



(c) If a bank is deficient in reserves for more than three (3) nonconsecutive biweekly or for two (2) or more consecutive periods in a calendar year, the director shall proceed as provided in section 26-1115, Idaho Code. The bank shall not increase its loans or discounts until its reserve is fully restored and the director may by order set a minimum level of cash reserves which the bank must maintain until such time as the director has reason to believe that the bank will comply with the reserve requirements of section 26-601, Idaho Code.

(2) The penalties set out in subsection (1) of this section are not exclusive. The director may in proper cases proceed in his discretion as provided in section 26-1115, Idaho Code, or chapter 10, title 26, Idaho Code. [I.C., § 26-602, as added by 1979, ch. 41, § 2, p. 62.]

**Compiler's notes.** Former § 26-602 was repealed. See Compiler's notes, § 26-601.

The bracketed word "the" in subdivision (1)(a) was inserted by the compiler.

### **26-602A. Exceptions to the twenty percent limitation on bank loans. [Repealed.]**

**Compiler's notes.** This section which comprised I.C., § 26-602A, as added by 1970, ch.

253, § 9, p. 671; am. 1971, ch. 185, § 1, p. 860 was repealed by S.L. 1979, ch. 41, § 1.

**26-603. Director of the department of finance — Reserve.** — In order to promote equality of competition between banks which are members of the Federal Reserve System and banks which are not members of the Federal Reserve System, the director may by regulation authorize state banks, until ninety (90) days after the close of the next regular session of the legislature, to comply with any reserve requirements which a bank which is a member of the Federal Reserve System may be required by federal rule, regulation, or law to comply with as a reserve requirement. [I.C., § 26-603, as added by 1979, ch. 41, § 2, p. 62.]

**Compiler's notes.** Former § 26-603 was repealed. See Compiler's notes, § 26-601.

Banks and Financial Institutions, §§ 451-454.

**Collateral References.** 10 Am. Jur. 2d,

9 C.J.S., Banks and Banking, § 464.

**26-604. Dividends — Surplus.** — No dividend shall be declared or paid by any bank until a surplus equal to twenty percent (20%) of the paid-in capital stock of such bank has been built up. Thereafter, the board of directors of any bank may declare a dividend of so much of its net profits as it shall deem expedient; but before any such dividend is declared or paid, not less than one-fifth ( $\frac{1}{5}$ ) of the net profits of the bank for such period as is covered by the dividend shall be carried to the surplus fund until such surplus fund shall amount to fifty percent (50%) of the paid-in common stock. Any loss sustained by any bank in excess of its undivided profits may be charged to its surplus account, provided that its surplus funds shall thereafter be reimbursed from its earnings in the manner above provided. If such surplus fund is reduced below an amount equal to twenty percent (20%) of the common stock, no further dividend shall be declared or paid until such surplus is restored to that amount, and thereafter dividends shall

only be declared and paid in the amount and in the manner above provided until such surplus shall be restored to an amount equal to fifty percent (50%) of the common stock.

The directors knowingly voting for any dividend in violation of any of the provisions of this section shall be jointly and severally liable, civilly, for any and all dividends so declared, and in addition thereto, shall be guilty of a misdemeanor. [I.C., § 26-604, as added by 1979, ch. 41, § 2, p. 62.]

**Compiler's notes.** Former § 26-604 was repealed. See Compiler's notes, § 26-601.

**Collateral References.** 9 C.J.S., Banks and Banking, § 65.

## **26-605 — 26-615. Limitations on bank loans and investments. [Repealed.]**

**Compiler's notes.** Former §§ 26-605 — 26-615 which comprised S.L. 1925, ch. 133, §§ 33, 34, 40-45, p. 190; am. 1927, ch. 37, § 1, p. 49; I.C.A., §§ 25-605 — 25-611; am. 1935,

ch. 22, § 1, p. 39; I.C., §§ 26-609A, 26-613 — 26-615, as added by 1970, ch. 253, §§ 3, 8, 10, 12, p. 671; am. 1973, ch. 3, § 1, p. 8, were repealed by S.L. 1979, ch. 41, § 1.

## **CHAPTER 7**

### **LIMITATIONS ON LOANS, INVESTMENTS, AND PRACTICES**

#### **SECTION.**

- 26-701. Investment of funds — Certain loans prohibited.
- 26-701A. [Repealed.]
- 26-702. Bank stock.
- 26-703. Real estate loans.
- 26-704. Mortgage insurance.
- 26-705. Government guaranteed loans.
- 26-706. Commercial loans.
- 26-707. Construction loans.
- 26-708. Determination of limits of loans and investments of banks.
- 26-709. Loans to one person.
- 26-710. Loans to officers.

#### **SECTION.**

- 26-711. Real estate holdings.
- 26-712. Valuation of assets.
- 26-713. Statutory bad debt.
- 26-714. Ownership and leasing of property for customers.
- 26-715. Lending of credit — Suretyship and guarantyship.
- 26-716. Validity of transactions.
- 26-717. Adverse claim to bank deposit.
- 26-718. Account of person under disability.
- 26-719. Branch or office at which instruments are to be presented must be indicated.

**26-701. Investment of funds — Certain loans prohibited. —** No bank shall employ its moneys, directly or indirectly, in trade or commerce, by buying and selling goods, chattels, wares and merchandise, except to the extent national banks are so authorized if approved by the director. A bank may hold and sell all kinds of property which may come into its possession as collateral security for loans, or any ordinary collection of debts, as prescribed by law. Any goods, chattels, wares or merchandise coming into the possession of any bank as collateral security or as a result of collection of debts shall be disposed of as soon as possible and shall not be considered as a part of the bank's assets after the expiration of two (2) years from the date of acquirement. The words "goods and chattels" as used in this section shall not be construed to include bonds and securities. [I.C., § 26-701, as added by 1979, ch. 41, § 2, p. 62; am. 1993, ch. 53, § 3, p. 137.]

**Compiler's notes.** Former §§ 26-701 — 26-706 which comprised S.L. 1925, ch. 133, §§ 35-39, p. 190; am. 1927, ch. 38, § 1, p. 50;

am. 1929, ch. 24, § 1, p. 24; I.C.A., §§ 25-701 — 25-705; am. 1933, ch. 30, § 1, p. 40; am. 1933 (E.S.), ch. 10, § 4, p. 19; am. 1935, ch.



144, § 1, p. 353; am. 1965, ch. 75, § 1, p. 122; I.C., § 26-701A, 26-706 as added by 1970, ch. 253, §§ 4, 5, p. 671, were repealed by S.L. 1979, ch. 41, § 1.

Sections 2 and 4 of S.L. 1993, ch. 53 are compiled as §§ 26-309 and 26-1212, respectively.

**Cross ref.** Civil and criminal penalties, § 26-1201 et seq.

Definitions, § 26-106.

Housing authority and other securities made legal investments, §§ 68-401 — 68-406. Idaho Credit Code, §§ 28-41-101 — 28-49-107.

Organization and corporation powers of banks, § 26-201 et seq.

**Sec. to sec. ref.** This chapter is referred to in § 26-1111.

#### DECISIONS UNDER PRIOR LAW

##### **Embezzlement.**

Where a bank cashier embezzled funds deposited by depositor by counter check, the statute of limitations did not begin to run until a demand was made by the depositor. *Carr v. Weiser State Bank*, 57 Idaho 599, 66 P.2d 1116 (1937).

Where a depositor gave a counter check to bank cashier, under agreement that a part of funds be invested, and check could be cashed only by bank officer, and cashier embezzled the funds, bank is liable to depositor for the amount embezzled. *Carr v. Weiser State Bank*, 57 Idaho 599, 66 P.2d 1116 (1937).

The state banking act does not prohibit the making of loans for depositors out of funds on deposit so that it is not per se unlawful. *Carr v. Weiser State Bank*, 57 Idaho 599, 66 P.2d 1116 (1937).

A national bank is not authorized by the national banking laws to lend deposited money on the behalf of a depositor. *Carr v. Weiser State Bank*, 57 Idaho 599, 66 P.2d 1116 (1937).

**Collateral References.** 10 Am. Jur. 2d, Banks and Financial Institutions, §§ 483-485, 504, 505, 606-608.

9 C.J.S., Banks and Banking, §§ 236-242, 466, 467, 660.

Powers of banking corporation to loan money for others. 33 A.L.R. 597.

Loan by bank to officers, directors, stockholders, or employees of bank. 90 A.L.R. 509.

Bad loans, liability of bank directors for losses on. 11 A.L.R. Fed. 606.

### **26-701A. Issuance of convertible or nonconvertible capital debentures and notes. [Repealed.]**

**Compiler's notes.** This section which comprised I.C., § 26-701A, as added by 1970, ch.

253, § 4, p. 671 was repealed by S.L. 1979, ch. 41, § 1.

**26-702. Bank stock.** — (1) Except as provided in subsection (2) of this section, no bank shall accept as collateral, nor make any loans or discounts on the security of nor purchase any shares of its own capital stock. No bank shall purchase the shares of any other bank wherever organized, or situated, except stock of federal reserve banks. A bank may acquire a security interest in or purchase its own stock if the acquisition is necessary to prevent loss upon a debt previously contracted in good faith and the stock so purchased or acquired shall within six (6) months from the date of acquirement be sold or disposed of at public or private sale. After the expiration of six (6) months any such stock shall not be considered as a part of the assets of such bank.

(2) With the written approval of the director, a bank may redeem or otherwise purchase a portion of its own capital stock if the director finds that such redemption or purchase does not impair the capital structure of the bank as required by section 26-205, Idaho Code, is not for an unreasonable price, does not conflict with the articles of incorporation or the bylaws of the bank, and is not otherwise detrimental to the bank or to the public interest, provided, however, (i) that a bank may not hold its capital stock so



redeemed or purchased for a period longer than twelve (12) months from the date of such redemption or purchase, and (ii) a bank shall not retain at any one time a total number of shares of its capital stock so redeemed or purchased in excess of seven per cent (7%) of the total number of shares of its capital stock then issued and outstanding. [I.C., § 26-702, as added by 1979, ch. 41, § 2, p. 62; am. 1986, ch. 58, § 1, p. 167.]

**Compiler's notes.** Former § 26-702 was repealed. See Compiler's notes, § 26-701.

**26-703. Real estate loans.** — Any bank may make real estate loans secured by first liens upon improved real estate, including improved farm land and improved business and residential properties. A loan secured by real estate within the meaning of this section shall be in the form of an obligation or obligations secured by mortgage, trust deed, or other such instrument which shall constitute a lien upon real estate, and any bank may purchase any obligation so secured when the entire amount of such obligation is sold to the bank. The amount of any such loan hereafter made shall not exceed ninety percent (90%) of the appraised value of the real estate offered as security and no such loan shall be made for a longer term than thirty (30) years. The foregoing limitations and restrictions shall not prevent the renewal or extension of loans heretofore made and shall not apply to:

- (a) real estate loans which are insured under the provisions of the National Housing Act, act of congress of June 27, 1934, and
- (b) amendatory and supplemental legislation relating to loans insured by the federal housing administration.

No such bank shall hold on its books real estate loans in an aggregate sum in excess of the amount of the capital and capital notes of such bank, plus the amount of its unimpaired surplus fund, or in excess of sixty percent (60%) of the amount of its savings and time deposits, whichever is the greater except with the consent of the director. [I.C., § 26-703, as added by 1979, ch. 41, § 2, p. 62.]

**Compiler's notes.** Former § 26-703 was repealed. See Compiler's notes, § 26-701.

The National Housing Act referred to in clause (a) of this section is compiled through-

out title 12 of the United States Code.

**Sec. to sec. ref.** This section is referred to in § 26-706.

**26-704. Mortgage insurance.** — When a bank makes a loan in substantial reliance upon private company mortgage insurance or guaranty previously approved in writing by the director of the department of finance, the insured or guaranteed portion of the loan does not constitute a real estate loan within the meaning of this chapter to the extent of the guaranty. [I.C., § 26-704, as added by 1979, ch. 41, § 2, p. 62.]

**Compiler's notes.** Former § 26-704 was repealed. See Compiler's notes, § 26-701.

**26-705. Government guaranteed loans.** — Loans secured by mortgages under the provisions of section 1709 of title 12, United States code annotated, as amended by an act of congress June 30, 1961, and legislation amendatory and supplemental thereto shall not be taken into account in determining the amount of real estate loans which a bank may make in relation to its capital and surplus or its time and savings deposits. Loans guaranteed under the provisions of title III of the act of congress of June 22, 1944, cited as "Servicemen's Readjustment Act of 1944," as amended December 28, 1945, and legislation amendatory and supplemental thereto, may be made or purchased by any bank, and any loan, at least twenty percent (20%) of which is guaranteed under said title III of the "Servicemen's Readjustment Act of 1944," as amended, may be made or purchased by any bank without regard to the limitations and restrictions of this chapter with respect to:

- (a) the ratio of the amount of the loan to the value of the property;
- (b) requirements as to duration or maturity of loan;
- (c) requirements for mortgage or other security;
- (d) requirements as to priority or dignity of lien; and
- (e) any limitation as to percentage of assets which may be invested in real estate loans. [I.C., § 26-705, as added by 1979, ch. 41, § 2, p. 62.]

**Compiler's notes.** Former § 26-705 was repealed. See Compiler's notes, § 26-701. 1944 referred to in this section see 38 U.S.C. § 1801 et seq.  
For the Servicemen's Readjustment Act of

**26-706. Commercial loans.** — Loans made to established industrial or commercial businesses:

- (a) which are in whole or in part discounted or purchased or loaned against as security by a federal reserve bank under the provisions of an act of congress of June 19, 1934, as amended;
  - (b) for any part of which a commitment shall have been made by a federal reserve bank under the provisions of said act of congress;
  - (c) in the making of which a federal reserve bank participates under the provisions of said act of congress and loans in which the small business administration cooperates through agreements to participate on an immediate or deferred basis under the "Small Business Act,"
- shall not be subject to the restrictions or limitations of this chapter imposed upon loans secured by real estate.

Any bank may make a loan secured by a second lien in an amount which when added to the amount unpaid on prior mortgages, liens and encumbrances, if any, does not exceed the percentage of appraised value provided in section 26-703, Idaho Code.

The provisions of the chapter shall not prevent any bank from taking another and immediate subsequent mortgage or deed of trust thereon when it already holds a first mortgage or deed of trust on such real estate, nor from accepting a junior lien on real estate to secure the repayment of a debt previously contracted in good faith or for facilitating the sale of property owned by it; nor shall it prevent subsequent liens of any kind from being taken where such are supplemental to, and in addition to, other adequate



security; nor shall it prevent subsequent liens of any kind from being taken to secure the payment of a debt contracted previously in good faith, when in the judgment of the directors of said bank such subsequent liens are necessary further to secure the payment of any debts and save such bank from losses. [I.C., § 26-706, as added by 1979, ch. 41, § 2, p. 62.]

**Compiler's notes.** Former § 26-706 was repealed. See Compiler's notes, § 26-701. clause (c) of the first paragraph see 15 U.S.C. § 633 et seq.  
For the Small Business Act referred to in

**26-707. Construction loans.** — Loans made to finance the construction of residences and having maturities not to exceed eighteen (18) months and loans to finance the construction of commercial buildings and having maturities not to exceed three (3) years, whether or not secured by a mortgage or similar lien on the real estate upon which the building is being constructed, shall not be considered as loans secured by real estate within the meaning of this chapter, but shall be classed as commercial loans, provided that no bank shall invest in, or be liable on, any such loans in an aggregate amount in excess of seventy percent (70%) of its capital, surplus and capital notes. [I.C., § 26-707, as added by 1979, ch. 41, § 2, p. 62.]

**26-708. Determination of limits of loans and investments of banks.** — For the purpose of determining limitations on loans and investments the following items are to be disregarded:

- (a) the sale of excess reserve funds by one bank to another bank;
- (b) the purchase of securities by a bank, under an agreement to resell at the end of a stated period; and
- (c) the purchase of mortgage loans by a bank, under agreement to resell at the end of a stated period.

The director may, upon application by a bank, approve loans and investments in excess of the limitations provided in this chapter. [I.C., § 26-708, as added by 1979, ch. 41, § 2, p. 62.]

**26-709. Loans to one person.** — The total liabilities to any bank of any person for money borrowed, shall at no time exceed twenty percent (20%) of the aggregate paid-in capital, surplus and capital notes of such bank.

The discount of bills of exchange drawn in good faith against actual existing values, the discount of bankers' acceptances of other banks, the discount of commercial or business paper actually owned by the person negotiating the same, and the obligations of the United States or general obligations of any state or of any political subdivision thereof, or obligation issued under authority of the Federal Farm Loan Act, shall not be considered as money borrowed, nor shall the foregoing limitations apply to loans made on warehouse receipts and bills of lading, when such warehouse receipts and bills of lading cover nonperishable commodities of the marketable value of a [at] least one hundred twenty percent (120%) of the amount loaned thereon.

Loans or obligations shall not be subject under this section to any limitation based upon such capital and surplus to the extent that such loans



or obligations are secured or covered by guaranties, or by commitments or agreements to take over or to purchase, made by any Federal Reserve Bank or by the United States or any department, bureau, board, commission, or establishment of the United States, including any corporation wholly owned directly or indirectly by the United States.

The combined liabilities of the several members of any firm, copartnership or unincorporated association to the loaning bank shall be included in the liabilities of such firm, copartnership or unincorporated association and shall be included in the liabilities of any member thereof in determining the foregoing limitations.

When in the judgment of the director the liabilities of any corporation or the combined liabilities of any corporation and one (1) or more of its stockholders to any bank are excessive, he shall require the reduction thereof to such limits and within such time as he shall prescribe.

Provided, further, that the director may compel the reduction of any loan which shall in his judgment appear excessive or dangerous. [I.C., § 26-709, as added by 1979, ch. 41, § 2, p. 62.]

**Compiler's notes.** The Federal Farm Loan Act referred to in the second paragraph of this section is compiled throughout title 12 of the United States Code.

The bracketed apostrophe and the bracketed word "at" in the second paragraph were inserted by the compiler.

#### ANALYSIS

Borrower's standing.  
Scope of liability.

#### **Borrower's Standing.**

A borrower has no standing to sue based on alleged violations of the Idaho Banking Act. *Eliopulos v. Knox*, 123 Idaho 400, 848 P.2d 984 (Ct. App. 1992).

#### **Scope of Liability.**

There is nothing in the Idaho Banking Act's stated purpose or its statutory scheme to suggest that it was designed to protect borrowers; the liability for violations of the Act are limited to damages sustained by the bank, its stockholders, depositors and creditors. *Eliopulos v. Knox*, 123 Idaho 400, 848 P.2d 984 (Ct. App. 1992).

**Collateral References.** 10 Am. Jur. 2d, Banks and Financial Institutions, §§ 999, 1005-1008.

9 C.J.S., Banks and Banking, §§ 685, 695-700.

**26-710. Loans to officers.** — Except as authorized under this section, no bank may extend credit in any manner to any of its own executive officers. Any extension of credit under this section must be approved by the board of directors of the bank, and may be made only if such credit extension comports with the principles of safety and soundness and is in compliance with regulation O of the board of governors of the federal reserve system, 12 C.F.R. 215. [I.C., § 26-710, as added by 1979, ch. 41, § 2, p. 62; am. 1990, ch. 93, § 1, p. 193; am. 1995, ch. 99, § 4, p. 299.]

**Compiler's notes.** Sections 3 and 5 of S.L. 1995, ch. 99 are compiled as §§ 26-301 and 26-1101, respectively.

**Collateral References.** 10 Am. Jur. 2d,

Banks and Financial Institutions, §§ 451-454.

9 C.J.S., Banks and Banking, § 464.

**26-711. Real estate holdings.** — A bank may purchase, acquire, hold and convey real estate for the following purposes only:

(1) Such as shall be necessary for the convenient transaction of its business, including at the same location as its banking offices other property to rent as a source of income; provided, however, that no bank shall invest in buildings and lots and furniture, fixtures and equipment in an amount greater than fifty per cent (50%) of the capital, surplus and capital notes of such bank.

(2) Such as shall be conveyed to it in satisfaction of debts previously contracted in the course of business.

(3) Such as it shall purchase at sale on judgments, decrees, mortgage foreclosure or trustees sale for debts previously contracted, but a bank shall not bid at such sale a larger amount than is necessary to satisfy all debts and costs necessary to obtain clear title. Such real estate shall be carried on the books of the bank at the lower of cost or market value. Market value shall be determined by a current appraisal prepared by an independent qualified appraiser approved by the director. Thereafter, but no more frequently than annually, the director may in his discretion request that the bank obtain from an independent qualified appraiser approved by the director, a further appraisal of market value or certification by the appraiser that the market value has not declined.

(4) No real estate acquired under subsections (2) and (3) of this section may be held for a longer period than five (5) years, provided, however, that upon application by the bank, the director shall approve the continued holding of any such real estate by the bank for an additional period of five (5) years upon the bank's showing of its good faith attempt to dispose of the real estate within the first five (5) year period, or that disposal within the first five (5) year period would be detrimental to the bank; and provided further that the bank shall, during the second five (5) year period, at the end of each year beginning at the end of the sixth year in which the property is held, write down the value of such real estate by twenty percent (20%) of the value at which such real estate is carried on its books at the beginning of the second five (5) year period. Value at the beginning of the second five (5) year period shall be the lower of cost or market value as determined pursuant to appraisal as provided in subsection (3) of this section. Nothing in this section shall be construed to prevent a bank from making loans secured by real estate as provided in this act, or a trust department holding and conveying real estate in trust.

(5) A bank may, with the approval of the director and the board of governors of the Federal Reserve System or the Federal Deposit Insurance Corporation invest in bank premises or in the stock, bonds, debentures, or other obligations of any corporation holding the banking buildings, lots and furniture, fixtures and equipment of such bank in an amount not to exceed the capital and surplus of the bank. [I.C., § 26-711, as added by 1979, ch. 41, § 2, p. 62; am. 1987, ch. 165, § 1, p. 325.]

**Compiler's notes.** The words "this act" refer to S.L. 1979, ch. 41 compiled as §§ 26-101 — 26-1319.

**Collateral References.** 10 Am. Jur. 2d, Banks and Financial Institutions, §§ 605-608.



9 C.J.S., Banks and Banking, § 237.

**26-712. Valuation of assets.** — No bank shall enter or at any time carry on its books any of its assets at a valuation exceeding their actual cost to the bank; nor shall the value of any of its assets be increased on the books of the bank without the written consent of the director. Additional charges, delinquency charges and other similar charges on consumer credit transactions permitted by and made in compliance with the Uniform Consumer Credit Code and added to the principal balance of the loan, shall not come within the prohibition of this section. [I.C., § 26-712, as added by 1979, ch. 41, § 2, p. 62.]

**Compiler's notes.** The Uniform Consumer Credit Code referred to in this section was repealed. For present law, see §§ 28-41-101 — 28-49-107.

**26-713. Statutory bad debt.** — Every bank carrying any bad debt, or a debt of doubtful value, as an asset shall, upon the request or demand of the director, collect the same or put it in good bankable condition or charge it out of its books. Any debt on which interest is past due and unpaid for a period of six (6) months, unless the same is well secured and in process of collection, shall be considered a bad debt within the meaning of this section. [I.C., § 26-713, as added by 1979, ch. 41, § 2, p. 62.]

**26-714. Ownership and leasing of property for customers.** — A bank may become the owner and lessor of personal property acquired upon the specific request and for the use of a customer and may incur such additional obligations as may be incident to becoming an owner and lessor of such property. [I.C., § 26-714, as added by 1979, ch. 41, § 2, p. 62.]

**26-715. Lending of credit — Suretyship and guarantyship.** — A bank may lend its credit, bind itself as a surety to indemnify another, or otherwise become a guarantor, only if it has a substantial interest in the performance of the transaction involved or has a segregated deposit sufficient in amount to cover the bank's total potential liability. [I.C., § 26-715, as added by 1979, ch. 41, § 2, p. 62.]

**26-716. Validity of transactions.** — Nothing in any law of this state shall in any manner whatsoever affect the validity of, or render void or voidable, the payment, certification or acceptance of a check or other negotiable instrument, or any other transaction by a bank in this state, because done or performed during any time other than regular banking hours. [I.C., § 26-716, as added by 1979, ch. 41, § 2, p. 62; am. 1993, ch. 52, § 2, p. 133.]

**Compiler's notes.** Sections 1 and 3 of S.L. 1993, ch. 52 are compiled as §§ 26-309 and 26-1855 (now repealed), respectively.

Section 5 of S.L. 1993, ch. 52 declared an emergency. Approved March 17, 1993.

**Sec. to sec. ref.** This section is referred to in § 26-107.

#### **Preemption.**

The National Bank Act preempts this section to the extent it prohibits national banks from operating on Saturdays. *Idaho v. Security Pac. Bank Idaho*, 800 F. Supp. 922 (D. Idaho 1992).



**26-717. Adverse claim to bank deposit.** — Notice to any bank of an adverse claim to a deposit standing on its books to the credit of any person shall not require the bank to recognize the adverse claim unless the adverse claimant shall:

(a) procure a restraining order, injunction or other appropriate process against the bank from a court of competent jurisdiction wherein the person to whose credit the deposit stands is made a party and served with summons, or

(b) execute to said bank, in a form and with sureties acceptable to the bank, a bond indemnifying the bank from any and all liability, loss, damage, costs and expenses for and on account of the payment of such adverse claim or the dishonor of the check or other order of the person to whose credit the deposit stands on the books of the bank.

This section shall not apply in any instance where the person to whose credit the deposit stands is a fiduciary for such adverse claimant, and the facts constituting such relationship and the facts showing reasonable cause for belief on the part of the claimant that the fiduciary is about to misappropriate the deposit, are made to appear by the affidavit of the claimant. [I.C., § 26-717, as added by 1979, ch. 41, § 2, p. 62.]

**Sec. to sec. ref.** This section is referred to in § 26-107.

**26-718. Account of person under disability.** — Whenever any minor or any person under disability shall become a depositor, as defined in section 26-106, Idaho Code, in any bank in his or her name, such bank may pay such money on the check, order or endorsement of such depositor the same as in cases of depositors not under disability, and such payment shall be in all respects valid in law. [I.C., § 26-718, as added by 1979, ch. 41, § 2, p. 62.]

**Sec. to sec. ref.** This section is referred to in § 26-107.

**26-719. Branch or office at which instruments are to be presented must be indicated.** — All checks, drafts, bills of exchange or other orders for the payment of money drawn against any bank operating branch banks shall indicate the particular bank and branch at which the same are to be presented for payment or acceptance. [I.C., § 26-719, as added by 1979, ch. 41, § 2, p. 62.]

CHAPTER 8

LIMITATIONS ON BORROWING MONEY AND PLEDGING ASSETS

SECTION.

- 26-801. Borrowing money — Limitations.
- 26-802. Issuance of convertible or nonconvertible capital debentures and notes.
- 26-803. Borrowing from federal agencies.

SECTION.

- 26-804. Borrowing money — Accounting.
- 26-805. Extent assets may be pledged.
- 26-806. Giving security for deposit prohibited.
- 26-807 — 26-813. [Repealed.]

**26-801. Borrowing money — Limitations.** — At no time shall the total borrowings of any bank exceed in the aggregate an amount equal to the capital and surplus of the bank, except with the consent of the director.

For the purpose of computing total borrowings the following items shall not be included:

- (a) Federal funds purchased.
- (b) The sale of securities by a bank, under an agreement to repurchase at the end of a stated period.
- (c) Borrowings from the Federal Reserve System.
- (d) The sale of mortgage loans by a bank, under agreement to repurchase at the end of a stated period.
- (e) Money borrowed to meet seasonal requirements.
- (f) Money borrowed to meet unexpected withdrawals.
- (g) Capital notes issued in accordance with section 26-802, Idaho Code.

The total of all borrowings by a bank including those items excluded from the computation of total borrowings may not exceed in the aggregate an amount equal to two and one-half (2 ½) times the capital and surplus of the bank, except with the consent of the director.

Whenever it shall appear to the director that a bank is borrowing money in excess of the above limitation, or for purposes other than as specified above, he may require it to reduce such borrowings within a time to be fixed by him. [I.C., § 26-801, as added by 1979, ch. 41, § 2, p. 62.]

**Compiler's notes.** Former §§ 26-801 — 26-806 which comprised S.L. 1925, ch. 133, §§ 46, 52-56, p. 190; I.C.A., §§ 25-801 — 25-806; am. 1933, ch. 12, §§ 1, 2, p. 13; am. 1937, ch. 47, § 1, p. 62; am. 1949, ch. 177, § 1, p. 375; am. 1967, ch. 41, § 1, p. 66; am. 1975, ch. 191, §§ 1, 2, p. 534; am. 1976, ch. 29, § 1,

p. 65, were repealed by S.L. 1979, ch. 41, § 1.

**Cross ref.** Civil and criminal penalties, § 26-1201 et seq.

Definitions, § 26-106.

**Sec. to sec. ref.** This chapter is referred to in § 26-1111.

**26-802. Issuance of convertible or nonconvertible capital debentures and notes.** — The issuance of convertible or nonconvertible capital debentures and notes by banks in accordance with normal business considerations is permissible.

With the consent of the director, every bank is, however, authorized to issue and sell its capital notes or debentures, for all capital purposes, in an amount not to exceed one hundred percent (100%) of its unimpaired, paid-in capital stock, plus fifty percent (50%) of its unimpaired surplus fund.

A bank may, with the approval of stockholders owning two-thirds (⅔) of the stock of the bank, entitled to vote, or without such approval if authorized by its articles of incorporation, issue convertible or nonconvertible capital debentures and notes in such amounts and under such terms and conditions as shall be approved by the director. [I.C., § 26-802, as added by 1979, ch. 41, § 2, p. 62.]

**Compiler's notes.** Former § 26-802 was repealed. See Compiler's notes, § 26-801.

**26-803. Borrowing from federal agencies.** — With the consent of the director, a bank may borrow from any agency of the United States. The limitations imposed on borrowing by this chapter shall not apply to borrowings under this section. [I.C., § 26-803, as added by 1979, ch. 41, § 2, p. 62.]

**Compiler's notes.** Former § 26-803 was repealed. See Compiler's notes, § 26-801.

**26-804. Borrowing money — Accounting.** — No officer or employee of any bank shall issue the note of such corporation for money borrowed or rediscount any of its paper, or pledge or hypothecate any of its assets, except when authorized by resolution of its board of directors, or by an authorized committee thereof.

All borrowings shall be carried on the books of the bank, and in all reports of such bank under liabilities.

All rediscounted paper containing the endorsement of or guarantee of the bank discounting the same, except when endorsed without recourse, shall be carried on the books of the bank and in all reports of such bank under liabilities as "rediscounts," until the same are actually paid by the makers, other than by renewal, or the rediscounting bank itself takes up the paper. [I.C., § 26-804, as added by 1979, ch. 41, § 2, p. 62.]

**Compiler's notes.** Former § 26-804 was repealed. See Compiler's notes, § 26-801.

**26-805. Extent assets may be pledged.** — No bank, banker or bank officer shall, except as otherwise authorized by law, pledge or hypothecate as collateral security for money borrowed, its assets in a ratio exceeding one and one-half (1½) times the amount borrowed (except as otherwise authorized by the director). [I.C., § 26-805, as added by 1979, ch. 41, § 2, p. 62.]

**Compiler's notes.** Former § 26-805 was repealed. See Compiler's notes, § 26-801.

The words enclosed in parentheses so appeared in the law as enacted.

**26-806. Giving security for deposit prohibited.** — It shall be unlawful for any bank to pledge, mortgage or hypothecate to any depositor any of its real or personal property as security for any deposit except money of the United States, the state of Idaho and its political subdivisions, and deposits for which security is required by any law of the United States, or required or permitted by any other statute of this state. Any pledge, mortgage or hypothecation made in violation hereof shall be unenforceable and void and any person, firm or corporation, holding or receiving any security or securities mortgaged or hypothecated, pledged or attempted to be pledged, shall, upon demand of any officer, director or stockholder of the bank or the director, be required forthwith to make return thereof, and the repayment of any deposit shall not be prerequisite to the recovery of any property so unlawfully pledged, hypothecated or mortgaged. [I.C., § 26-806, as added by 1979, ch. 41, § 2, p. 62; am. 1998, ch. 406, § 1, p. 1262.]



**Compiler's notes.** Former § 26-806 was repealed. See Compiler's notes, § 26-801.

DECISIONS UNDER PRIOR LAW

ANALYSIS

Contract void.  
Recovery of pledged assets.  
Rights same as those of general depositor.

**Contract Void.**

Contract in violation of this section is void and not merely illegal. Porter v. Canyon County Farmers' Mut. Fire Ins. Co., 45 Idaho 522, 263 P. 632 (1928).

**Recovery of Pledged Assets.**

Commissioner (now director) in charge of insolvent bank may recover assets pledged in

violation of this section without offering to return deposit. Porter v. Canyon County Farmers' Mut. Fire Ins. Co., 45 Idaho 522, 263 P. 632 (1928).

**Rights Same as Those of General Depositor.**

Where depositor accepts assets of bank as security in violation of this section, he does not have, upon bank becoming insolvent, any greater rights than any general depositor. Porter v. Canyon County Farmers' Mut. Fire Ins. Co., 45 Idaho 522, 263 P. 632 (1928).

**26-807 — 26-813. Reports — Supplemental reports — Failure to transmit reports — Refusal to submit to examination — Records not public — Penalty for disclosure of confidential information — Impairment of capital. [Repealed.]**

**Compiler's notes.** These sections which comprised S.L. 1925, ch. 133, §§ 57-63, p. 190; I.C.A., §§ 25-807 — 25-813, were repealed by S.L. 1979, ch. 41, § 1.

CHAPTER 9

CONSOLIDATION, SALE AND REORGANIZATION

SECTION.

- 26-901. Resulting national bank.
- 26-902. Resulting state bank.
- 26-903. Merger procedure — Resulting state bank.
- 26-904. Merger — Approval by stockholders of state banks.
- 26-905. Effective date of merger — Filing of approved agreement — Certificate of merger as evidence.

SECTION.

- 26-906. Conversion of national into state bank.
- 26-907. Continuation of corporate entity — Use of old name.
- 26-908. Sale of assets of bank or department.
- 26-909. Dissenting stockholders.
- 26-910. Nonconforming assets of business.
- 26-911. Book value of assets.
- 26-912 — 26-923. [Repealed.]

**26-901. Resulting national bank.** — (1) Nothing in the law of this state shall restrict the right of a state bank to merge with or convert into a resulting national bank. The action to be taken by such merging or converting state bank and its rights and liabilities and those of its stockholders shall be the same as those prescribed for national banks at the time of the action by the law of the United States and not by the law of this state, except that a vote of the holders of two-thirds (2/3) of each class of voting stock of a state bank, at a meeting called in conformity with the provisions of section 26-904, Idaho Code, shall be required for the merger or conversion, and that on conversion by a state into a national bank the rights of dissenting stockholders shall be those specified in section 26-909, Idaho Code.

(2) Upon the completion of the merger or conversion, the franchise of any merging or converting state bank shall automatically terminate. [I.C., § 26-901, as added by 1979, ch. 41, § 2, p. 62.]

**Compiler's notes.** Former §§ 26-901 — 26-911 which comprised S.L. 1905, p. 175, § 19; reen. R.C., § 2985; am. 1911, ch. 124, § 71, p. 407; reen. C.L. 223:96; C.S., § 5291; S.L. 1925, ch. 133, §§ 64-73, p. 190; I.C.A., §§ 25-901 — 25-911, were repealed by S.L. 1979, ch. 41, § 1.  
**Cross ref.** Definitions, § 26-106.  
**Sec. to sec. ref.** This chapter is referred to in § 26-1111, 26-2606.

**26-902. Resulting state bank.** — Upon approval by the director, banks may be merged to result in a state bank or a national bank may convert into a state bank as hereafter prescribed, except that the action by a national bank shall be taken in the manner prescribed by and shall be subject to limitations and requirements imposed by the law of the United States which shall also govern the rights of its dissenting stockholders. [I.C., § 26-902, as added by 1979, ch. 41, § 2, p. 62.]

**Compiler's notes.** Former § 26-902 was repealed. See Compiler's notes, § 26-901.

**26-903. Merger procedure — Resulting state bank.** — (1) The board of directors of each merging state bank shall, by a majority of the entire board, approve a merger agreement which shall contain:

- (a) A statement or recital that the agreement is subject to approval by the director and by the stockholders of each merging bank.
- (b) The name of each merging bank and location of each office.
- (c) With respect to the resulting bank:
  1. the name and location of the principal and the other offices;
  2. the name and residence of each director to serve until the next annual meeting of the stockholders;
  3. the name and residence of each officer;
  4. the amount of capital, the number of shares and the par value of each share;
  5. the amount, terms, and preferences if preferred stock is to be issued; and
  6. the amendments to its charter and bylaws.
- (d) Provisions governing:
  1. the manner of converting the shares of the merging banks into shares of the resulting state bank or into shares of a bank holding company; and
  2. the manner of disposing of the shares of the resulting state bank or of the bank holding company not taken by the dissenting stockholders of each merging bank.

(e) Such other provisions as the director may require to enable him to discharge his duties with respect to the merger.

(2) After approval by the board of directors of each merging state bank, the merger agreement shall be submitted to the director for approval, together with certified copies of the authorizing resolutions of each board of directors showing approval by a majority of the entire board of each merging

state bank and evidence of proper action by the board of directors of any merging national bank.

(3) After receipt by the director of the papers specified in subsection (a), the director shall approve or disapprove the merger agreement. The director shall approve the agreement if it finds that:

(a) The resulting state bank meets the requirements as to the formation of a new state bank.

(b) The agreement provides an adequate capital structure including surplus in relation to the deposit liabilities of the resulting state bank and its other activities which are to continue or are to be undertaken.

(c) The agreement is fair.

(d) The merger is not contrary to the public interest.

(4) If the director disapproves an agreement, the objections shall be stated in writing and the merging banks shall be given an opportunity to amend the merger agreement to obviate such objections. [I.C., § 26-903, as added by 1979, ch. 41, § 2, p. 62.]

**Compiler's notes.** Former § 26-903 was repealed. See Compiler's notes, § 26-901.

#### **26-904. Merger — Approval by stockholders of state banks. —**

(1) To be effective, a merger which is to result in a state bank must be approved by the stockholders of each merging state bank by a vote of two-thirds ( $\frac{2}{3}$ ) of the outstanding voting stock of each class at a meeting called to consider such action, which vote shall constitute the adoption of the charter and bylaws of the resulting state bank, including the amendments in the merger agreement.

(2) Notice of the meeting of stockholders of each state bank shall be given by publication in a newspaper of general circulation in the place where its principal office is located at least once a week for four (4) successive weeks, and by mail at least fifteen (15) days before the date of the meeting, to each stockholder of record of each merging bank at his address on the books of his bank; no notice by publication need be given if written waivers are received from the holders of two-thirds ( $\frac{2}{3}$ ) of the outstanding shares of each class of stock. The notice shall be accompanied by a copy of section 26-909, Idaho Code, and shall state that the section sets forth the exclusive rights and remedies of dissenting stockholders. [I.C., § 26-904, as added by 1979, ch. 41, § 2, p. 62.]

**Compiler's notes.** Former § 26-904 was repealed. See Compiler's notes, § 26-901.

**Sec. to sec. ref.** This section is referred to in § 26-901.

#### **26-905. Effective date of merger — Filing of approved agreement — Certificate of merger as evidence. —**

(1) A merger or sale which is to result in a state bank shall, unless a later date is specified in the agreement, become effective upon the filing with the director of the executed agreement together with copies of the resolutions of the stockholders of each merging purchasing and selling bank approving it and a list of the owners of the shares voted against the merger or purchase, certified by the bank's



president or a vice-president and a secretary or cashier. The charters of the merging banks, other than the resulting bank, shall thereupon automatically terminate.

(2) The director shall promptly issue to the resulting bank a certificate of merger specifying the name of each merging bank and the name of the resulting state bank. Such certificate shall be conclusive evidence of the merger and of the correctness of all proceedings therefor in all courts and places, and may be recorded in the office of the county recorder of any county wherein property of the merging banks is held, to evidence the new name in which the property of the merging banks is held. [I.C., § 26-905, as added by 1979, ch. 41, § 2, p. 62.]

**Compiler's notes.** Former § 26-905 was repealed. See Compiler's notes, § 26-901.

**Collateral References.** 10 Am. Jur. 2d, Banks and Financial Institutions, §§ 192, 193, 195, 196, 203, 238.

9 C.J.S., Banks and Banking, § 158-162.

Trust business, national bank's power to engage in, upon consolidation with state bank or trust company. 153 A.L.R. 421.

Consolidation or merger of bank as affecting statutory superadded liability of stock-

holders. 154 A.L.R. 427.

Status of owners of nonregistered stock as "stockholders" within state statute relating to merger or consolidation or reorganization of corporation, or sale of its entire assets. 158 A.L.R. 983.

Dissenting stockholders, construction and effect of provision for payment of, in statute relating to merger and consolidation of banks. 162 A.L.R. 1237; 174 A.L.R. 960.

**26-906. Conversion of national into state bank.** — (1) A national bank located in this state which follows the procedure prescribed by the laws of the United States to convert into a state bank, shall be granted a charter by the director unless he finds that the bank does not meet the standards as to location of offices, capital structure, and business experience and character of officers and directors for the incorporation of a state bank.

(2) The national bank may apply for such charter by filing with the director a certificate signed by its president and cashier and by a majority of the entire board of directors, setting forth the corporate action taken in compliance with the provisions of the laws of the United States governing the conversion of the national to a state bank, and the articles of incorporation, approved by the stockholders, for the government of the bank as a state bank. [I.C., § 26-906, as added by 1979, ch. 41, § 2, p. 62.]

**Compiler's notes.** Former § 26-906 was repealed. See Compiler's notes, § 26-901.

**Sec. to sec. ref.** This section is referred to in § 26-1812.

**Collateral References.** 10 Am. Jur. 2d, Banks and Financial Institutions, §§ 192, 193, 196, 203.

9 C.J.S., Banks and Banking, §§ 564-570.

**26-907. Continuation of corporate entity — Use of old name.** — (1) A resulting state or national bank shall be the same business and corporate entity as each merging bank or as the converting bank with all the property, rights, powers, and duties of each merging bank or the converting bank, except as affected by the law of this state in the case of a resulting state bank or the laws of the United States in the case of a resulting national bank, and by the charter and bylaws of the resulting bank.

(2) A resulting bank shall have the right to use the name of any merging bank or of the converting bank whenever it can do any act under such name more conveniently.

(3) Any reference to a merging or converting bank in any writing, whether executed or taking effect before or after the merger or conversion, shall be deemed a reference to the resulting bank if not inconsistent with the other provisions of such writing, except when the resulting bank is not authorized to or has not qualified to exercise the powers conferred or required by the writing. [I.C., § 26-907, as added by 1979, ch. 41, § 2, p. 62.]

**Compiler's notes.** Former § 26-907 was repealed. See Compiler's notes, § 26-901.

**26-908. Sale of assets of bank or department.** — (1) Any state bank may sell to any other bank:

- (a) all or substantially all of the selling bank assets and business; or
- (b) all or substantially all of the assets and business of any department of the selling bank.

(2) Any state bank may, upon assuming the liabilities relating thereto, purchase:

- (a) all or substantially all of the assets and business of another bank; or
- (b) all or substantially all of the assets and business of any department of another bank.

(3) The agreement of purchase and sale shall be authorized, approved by the director, approved by the vote of a majority of the stockholders of the purchasing and selling bank at a meeting called for the purpose in like manner as meetings to approve mergers are called and filed with the director accompanied by evidence of such stockholders' approval in like manner as agreements of mergers are filed. After such approval is given by the stockholders a notice of such sale shall be published once a week for three (3) successive weeks in a newspaper of large general circulation in the county in which the selling bank has its principal office, and proof of such publication shall be filed with the director.

(4) Notwithstanding any term of the agreement, or of his contract of deposit, any depositor whose business is thus sold has the right to withdraw his deposit in full on demand after such sale unless by dealing with [the] purchasing bank with knowledge of the purchase he ratifies the transfer.

(5) The agreement of sale may provide for the transfer to the purchasing bank of all fiduciary positions held by the selling bank subject to the right of the court, on petition of any interested party, to appoint another or succeeding fiduciary to the positions so transferred. Until the court appoints another or succeeding fiduciary the purchasing bank shall, if qualified to do so, exercise any fiduciary function vested in the selling bank.

(6) No right against or obligation of the selling bank in respect of assets or business sold shall be released or impaired by the sale until one (1) year from the last date of publication of the notice pursuant to subsection (3) of this section, but after the expiration of such year, no action can be brought



against the selling bank on account of any deposit, obligation, trust, or asset transferred to or liability assumed by the purchasing bank.

(7) A bank may, with the prior approval of the director, purchase assets and the charter of and assume deposit liabilities or [of] a branch office of another bank or sell assets and the charter of a branch and permit the assumption of deposit liabilities by the purchasing bank. The sale or acquisition of a branch office and deposit liabilities shall comply with all capital requirements and other statutory requirements and restrictions relating to the maintenance of branch offices as required by this law. Banks which desire to sell, purchase or exchange branches shall apply to the director and shall provide all information required by the director to properly evaluate the impact upon public need and convenience and the impact upon depositors, stockholders and creditors of both the selling and acquiring banks. The director may in his discretion require a public hearing for the purpose of obtaining public impact and evaluating public need and convenience issues. The department shall make an investigation of the proposed sale, purchase or exchange of branches. The actual cost of an investigation, administrative procedure or hearing, shall be shared equally by the selling and acquiring banks. All fees shall be paid to the department of finance by the applicant banks following the approval or denial by the director. A bank selling a branch shall publish notice of the sale once a week for three (3) successive weeks in a newspaper of general circulation in the county in which the branch is located. [I.C., § 26-908, as added by 1979, ch. 41, § 2, p. 62.]

**Compiler's notes.** Former § 26-908 was repealed. See Compiler's notes, § 26-901. and the bracketed word "of" in subsection (7) were inserted by the compiler.  
The bracketed word "the" in subsection (4)

**26-909. Dissenting stockholders.** — (1) A dissenting stockholder of a state bank shall be entitled to receive the value in cash of only those shares which were voted against a merger to result in a state bank, against the conversion of a state bank into a national bank or against a sale of all or substantially all of the state bank's assets, and only if written demand thereupon is made to the resulting state or national bank at any time within thirty (30) days after the effective date of the merger or conversion accompanied by the surrender of the stock certificates. The value of such shares will be determined, as of the date of the stockholders' meeting approving the merger or conversion, by three (3) appraisers, one (1) to be selected by the vote of the owners of two-thirds ( $\frac{2}{3}$ ) of the shares involved at the meeting called by the director on ten (10) days' notice, one (1) by the board of directors of the resulting state or national bank, and the third by the two (2) so chosen. The valuation agreed upon by any two (2) appraisers shall govern. If any necessary appraiser is not appointed within sixty (60) days after the effective date of the merger or conversion, the director shall make the necessary appointment, or if the appraisal is not completed within ninety (90) days after the merger or conversion becomes effective, the director shall cause an appraisal to be made.



(2) The merger agreement may fix an amount which the merging banks consider to be the fair market value of the shares of a merging or a converting bank at the time of the stockholders' meeting approving the merger or conversion, which the resulting bank will pay dissenting stockholders of that bank entitled to payment in cash. The amount due under such accepted offer or under the appraisal shall constitute a debt of the resulting state or national bank.

(3) The expenses of appraisal shall be paid by the resulting state bank except when the value fixed by the appraiser does not exceed the value fixed by the merger agreement in which case one-half ( $\frac{1}{2}$ ) of the expenses shall be paid by the resulting bank and one-half ( $\frac{1}{2}$ ) by the dissenting stockholders requesting the appraisal in proportion to their respective holdings. [I.C., § 26-909, as added by 1979, ch. 41, § 2, p. 62.]

**Compiler's notes.** Former § 26-909 was repealed. See Compiler's notes, § 26-901.

**Sec. to sec. ref.** This section is referred to in §§ 26-901 and 26-904.

**26-910. Nonconforming assets of business.** — If a merging, converting or selling bank has assets which do not conform to the requirements of state law for the resulting or purchasing state bank or carries on business activities which are not authorized or permitted for the resulting or purchasing state bank, the director may permit a reasonable time to conform with the law of this state, and, in the case of a resulting or purchasing state bank that is not to exercise trust powers, shall require that prompt application be made to a court of competent jurisdiction for the appointment of successor trustees. [I.C., § 26-910, as added by 1979, ch. 41, § 2, p. 62.]

**Compiler's notes.** Former § 26-910 was repealed. See Compiler's notes, § 26-901.

**26-911. Book value of assets.** — Without approval by the director no asset shall be carried on the books of the resulting or purchasing bank at a valuation higher than that on the books of the merging or converting bank at the time of its last examination by a state or national bank examiner before the effective date of the merger or conversion. [I.C., § 26-911, as added by 1979, ch. 41, § 2, p. 62.]

**Compiler's notes.** Former § 26-911 was repealed. See Compiler's notes, § 26-901.

**26-912 — 26-923. Closing and liquidation of banks — Treatment of claims — Disposition of assets — Reopening of bank.**  
[Repealed.]

**Compiler's notes.** These sections which comprised S.L. 1925, ch. 133, §§ 74-81, p. 190; I.C.A., §§ 25-912 — 25-919; 1933, ch. 44, §§ 1, 2, p. 58; ch. 60, § 1, p. 97; am. 1933

(E.S.), ch. 10, § 5, p. 19; I.C.A., § 25-916A, as added by 1935, ch. 117, § 1, p. 279, were repealed by S.L. 1979, ch. 41, § 1.

## CHAPTER 10

## CLOSING AND LIQUIDATION OF BANKS

## SECTION.

- 26-1001. Grounds for closing bank.
- 26-1002. Penalty for closing bank with criminal intent.
- 26-1003. Receiving deposits when insolvent.
- 26-1004. Bank may be placed in director's possession.
- 26-1005. Effect of posting notice.
- 26-1006. Taking possession of bank — Notice.
- 26-1007. Resumption after closing.
- 26-1008. Powers of director on closing bank.
- 26-1009. Recourse of aggrieved bank.
- 26-1010. Director may appoint agents.
- 26-1011. Federal Deposit Insurance Corporation — Right to act as receiver or liquidator.
- 26-1012. Closed bank — Federal Deposit Insurance Corporation furnishing funds for payment of insured deposit liabilities — Subrogation.
- 26-1013. Closed banks — Pledge or sale of assets by director or liquidator to Federal Deposit Insurance Corporation — Court order.
- 26-1014. Federal Deposit Insurance Corporation acting as liquidator — Possession and control of assets and business of bank.

## SECTION.

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**26-1001. Grounds for closing bank.** — Whenever it shall appear to the department of finance that:

- (1) Any bank has violated its charter or any law of this state; or
- (2) Has violated any general rule or regulation of the director, made in accordance with law, or any special lawful order, direction or requirement of the director, directed to any particular bank; or
- (3) That the capital of any bank is impaired or for any reason is below the amount required by law and has not been made good after fifteen (15) days' notice, as provided by law, or without such notice, in the event a majority of the board of directors of such bank notify the director in writing that the same cannot be made good within fifteen (15) days; or
- (4) That such bank cannot meet or has failed to meet any of its liabilities as they become due in the regular course of business; or
- (5) That its reserve has fallen below the amount required by law and it has failed to make good such reserve within fifteen (15) days after being requested to do so by the director, or, without such notice, if a majority of the directors, in writing, notify the director that such reserve cannot be made good within fifteen (15) days, or if it is continually allowing its reserve to fall below the required amount; or
- (6) That it is conducting business in an unsafe and unauthorized manner, or is in an unsafe or unsound condition; or

(7) It has refused to submit its papers, books and records to the inspection of the director or his authorized agent or representative; or

(8) That any director or officer of such bank has refused to be examined on oath touching the affairs or business of any bank insofar as such relate to the solvency of the bank or matters having to do with the supervision of the director.

The director himself, or his duly authorized agent upon express authority from the director, may in his discretion, close said bank and take possession of all the books, records, assets and business of every description of such bank, and hold the same and retain possession thereof until such bank shall be authorized by him to resume business, or its operations or liquidation be turned over to the Federal Deposit Insurance Corporation as provided in this chapter, or its affairs be liquidated as herein provided, and he shall do so in cases where a bank comes into his hand voluntarily.

The powers and authority conferred on the director by this section, except in cases of voluntary surrender, shall be considered as discretionary and not as mandatory, and so long as the director acts in good faith in the matter, neither he nor his deputies shall be held liable civilly or criminally or upon their official bonds in any action taken thereunder or for any failure to act thereunder. [I.C., § 26-1001, as added by 1979, ch. 41, § 2, p. 62.]

**Compiler's notes.** Former §§ 26-1001, 26-1002 which comprised S.L. 1925, ch. 133, §§ 84, 87, p. 190; I.C.A., §§ 25-1001, 25-1002; am. 1933, ch. 71, § 1, p. 115; am. 1935, ch. 109, § 1, p. 258; am. 1955, ch. 197, § 1, p. 426; am. 1957, ch. 122, § 1, p. 203; am. 1959, ch. 133, § 1, p. 282; am. 1963, ch. 180, § 1, p. 538; am. 1967, ch. 40, § 1, p. 64 were repealed by S.L. 1979, ch. 41, § 1.

**Cross ref.** Definitions, § 26-106.

**Public Depository Law,** §§ 57-101 — 57-145.

**Sec. to sec. ref.** This chapter is referred to in §§ 26-602, 26-1111.

**Cited in:** *Idah-Best, Inc. v. First Sec. Bank*, 99 Idaho 517, 584 P.2d 1242 (1978).

**Collateral References.** Securities depos-

ited in bank, rights of owners of, upon its insolvency. 51 A.L.R. 914; 84 A.L.R. 1534; 126 A.L.R. 625.

Payment of depositor's check after insolvency of bank as an unlawful preference. 74 A.L.R. 937.

When bank deemed insolvent or "hopelessly" insolvent, in civil cases. 85 A.L.R. 811.

Judicial notice as to insolvency of bank. 89 A.L.R. 1352.

Paper of insolvent bank, issuance of receipt of, as converting trust relation into debtor and creditor relation so as to defeat preference. 92 A.L.R. 1244.

Prerogative right of state to preference at common law. 167 A.L.R. 640.

**26-1002. Penalty for closing bank with criminal intent.** — If the director of the department of finance or official in the department of finance, shall, as a result of malice or for personal gain, declare any bank insolvent, he shall, upon conviction thereof be subject to punishment by fine not exceeding one thousand dollars (\$1,000), or imprisonment in the county jail not exceeding one (1) year, or both, within the discretion of the court. [I.C., § 26-1002, as added by 1979, ch. 41, § 2, p. 62.]

**Compiler's notes.** Former § 26-1002 was repealed. See Compiler's notes, § 26-1001.

**Cited in:** *Idah-Best, Inc. v. First Sec. Bank*, 99 Idaho 517, 584 P.2d 1242 (1978).



**26-1003. Receiving deposits when insolvent.** — The owners or officers of any bank or trust company who shall receive any deposits, knowing that such bank or trust company is insolvent, shall be guilty of a felony and punished, upon conviction thereof, by a fine not exceeding one thousand dollars (\$1,000), or imprisonment in the state penitentiary not exceeding two (2) years, or both such fine and imprisonment, at the discretion of the court. [I.C., § 26-1003, as added by 1979, ch. 41, § 2, p. 62.]

**Compiler's notes.** Former § 26-1003, which comprised S.L. 1925, ch. 133, § 88, p. 190; I.C.A., § 25-1003, was repealed by S.L.

1967, ch. 161, § 10-102, effective at midnight on December 31, 1967.

#### DECISIONS UNDER PRIOR LAW

##### **"Insolvent" Defined.**

A bank is insolvent when its assets and property are of such a character and value or in such a condition that it is unable to meet demands made upon it on the usual and ordinary course of banking business. *State v. Cramer*, 20 Idaho 639, 119 P. 30 (1911).

**Collateral References.** 10 Am. Jur. 2d, Banks and Financial Institutions, §§ 456-463.

9 C.J.S., Banks and Banking, §§ 740, 745.

Recession of deposit or trust in respect thereof because of insolvency of bank when it was made. 20 A.L.R. 1206; 25 A.L.R. 728; 37 A.L.R. 620; 81 A.L.R. 1078.

Constitutionality of statute making failure of bank prima facie evidence of knowledge of insolvency at time of receipt of deposits. 51 A.L.R. 1154; 86 A.L.R. 179; 162 A.L.R. 495.

Constitutionality of statute rendering officers or directors of bank criminally liable for receiving deposit after insolvency. 76 A.L.R. 530.

Opinion or conclusion of witness as to insolvency, based on examination of books and accounts. 81 A.L.R. 1431.

Constitutionality of statute making insolvency of bank prima facie evidence of fraud. 86 A.L.R. 183; 162 A.L.R. 495.

Agreement by bank to transmit excess of deposit over specified amount as giving rise to a trust or preference. 89 A.L.R. 1287.

Acceptance of paper of insolvent bank as converting trust relation into debtor and creditor relation so as to defeat preference. 92 A.L.R. 1244.

Negligence in failing to discover insolvency of bank as equivalent of knowledge, as regards criminal responsibility for receiving deposit after insolvency. 98 A.L.R. 615.

Statute as to taking deposit when insolvent as special or class legislation, or as denying equal protection of laws. 111 A.L.R. 144.

**26-1004. Bank may be placed in director's possession.** — Any bank may place its affairs and assets under the control and in the possession of the director after oral or written notice to the director by posting a notice on the front door of such bank, indicating that said bank is in his hands, which notice shall be signed, in their own handwriting, by a majority of the directors. [I.C., § 26-1004, as added by 1979, ch. 41, § 2, p. 62.]

**Compiler's notes.** Former § 26-1004 which comprised S.L. 1925, ch. 133, § 89, p. 190; I.C.A., § 25-1004, was repealed by S.L. 1979, ch. 41, § 1.

**Collateral References.** 9 C.J.S., Banks and Banking, § 135.

"Freezing" or "stabilizing" bank deposits, statutes and agreements relating to. 95 A.L.R. 1214.

**26-1005. Effect of posting notice.** — The posting of such notice by the directors of any bank, or of a like notice signed by the director, shall be sufficient to place all assets and property of such bank, of whatever nature

and wherever situate, in possession of the director, and shall operate as a bar to any attachment or any other legal proceedings against such bank or its assets, and no valid lien or claim can be acquired or created, or transfer or assignment made in any manner, binding or affecting any of the assets of such bank after the posting of such notice or after taking possession of any bank by the director. [I.C., § 26-1005, as added by 1979, ch. 41, § 2, p. 62.]

**Compiler's notes.** Former § 26-1005, which comprised S.L. 1925, ch. 133, § 90, p. 190; I.C.A., § 25-1005, was repealed by S.L. 1967, ch. 161, § 10-102, effective at midnight on December 31, 1967.

**Collateral References.** 11 Am. Jur. 2d, Banks and Financial Institutions, §§ 1033, 1034, 1037, 1098, 1099.

9 C.J.S., Banks and Banking, §§ 143, 144.

**26-1006. Taking possession of bank — Notice.** — On taking possession of the assets and business of the bank, the director shall, in addition to posting notice thereof, on the front door of such bank, as aforesaid, also notify personally or by telephone or mail or by public announcement through the news media, all correspondent banks, and any and all persons or corporations known to him to be holding or in possession of, any of the estate of such bank. [I.C., § 26-1006, as added by 1979, ch. 41, § 2, p. 62.]

**Compiler's notes.** Former § 26-1006, which comprised S.L. 1925, ch. 133, § 91, p. 190; I.C.A., § 25-1006, was repealed by S.L.

1967, ch. 161, § 10-102, effective at midnight on December 31, 1967.

**26-1007. Resumption after closing.** — After the director has taken possession of any bank, he may permit such bank to resume business upon such conditions as may be approved by him. [I.C., § 26-1007, as added by 1979, ch. 41, § 2, p. 62.]

**Compiler's notes.** Former § 26-1007 which comprised S.L. 1925, ch. 133, § 92, p. 190; I.C.A., § 25-1007 was repealed by S.L. 1979, ch. 41, § 1.

Banks and Financial Institutions, §§ 1051, 1066, 1069, 1129-1135.

9 C.J.S., Banks and Banking, § 150.

Legal questions presented by reopening of closed bank. 80 A.L.R. 1487; 99 A.L.R. 1217.

**Collateral References.** 11 Am. Jur. 2d,

**26-1008. Powers of director on closing bank.** — Upon taking the assets and business of any bank into his possession, the director is authorized to collect all moneys due to such bank, assess the stock of such bank, and to do such other acts as are necessary to conserve its assets and business, and he shall proceed to liquidate the affairs thereof. He shall have general and inclusive power and authority, except as otherwise limited by the terms of this act, to do any and all acts, to take any and all steps necessary, or, in his discretion, desirable for the protection of the property and assets of such bank and the speedy and economical liquidation of the assets and affairs of such bank and the payment of its creditors, or for the reopening and resumption of business by said bank, where that is in his discretion practicable or desirable.

The director may institute, in his own name as director, or in the name of the bank, such suits and actions and other legal proceedings as he deems expedient for such purposes, and by making application to the district court



of the county in which such bank is located, or to the judge thereof, in chambers, may procure an order to sell, compromise or compound any bad or doubtful debt or claim, and to sell and dispose of any or all the assets, which sale may be made to stockholders, officers, directors, or others interested in such bank, on consent of the court. Any such application or petition by the director may be had at any time, either in term or vacation in court, or in chambers, as the court may order. [I.C., § 26-1008, as added by 1979, ch. 41, § 2, p. 62; am. 1987, ch. 76, § 1, p. 147.]

**Compiler's notes.** Former § 26-1008, which comprised S.L. 1925, ch. 133, § 93, p. 190; I.C.A., § 25-1008, was repealed by S.L. 1967, ch. 161, § 10-102, effective at midnight on December 31, 1967.

The words "this act" refer to S.L. 1979, ch. 41 compiled herein as §§ 26-101 — 26-1319.

**Collateral References.** 11 Am. Jur. 2d, Banks and Financial Institutions, §§ 1048-1053, 1098-1100.

9 C.J.S., Banks and Banking, §§ 131-152.

Letter of credit, rights and remedies of parties to, or to draft issued thereunder, upon insolvency of bank issuing letter before payment of draft. 80 A.L.R. 803.

Conservator for bank. 91 A.L.R. 234; 92 A.L.R. 1258; 107 A.L.R. 1431.

Collateral, power of receiver or liquidator to exchange. 112 A.L.R. 476.

Collateral security, rights and remedies of one to whom bank agrees to furnish, where bank fails before doing so. 122 A.L.R. 266.

**26-1009. Recourse of aggrieved bank.** — Any bank deeming itself aggrieved by the action of the director in taking possession of its assets or closing its doors may, within ten (10) days after such possession shall have been taken, apply to the district court of the county in which its principal place of business is located, or to the judge thereof in chambers, to enjoin further proceedings by the director, and the court or the judge thereof in chambers, after notifying the director to appear at a specified time and place to show cause why further proceedings should not be enjoined, and after hearing the allegations and proofs of the parties, and determining facts, may, on the merits, dismiss such application, or enjoin the director from further proceeding and direct him to surrender the business and assets of said bank. Such application for injunction may be heard at any time after five (5) days' notice from the time of service on said director in the discretion of the court, or the judge thereof, or at any time prior thereto by the consent of the director. Application therefor shall be made on the verified complaint of the bank, in the ordinary form used in civil actions in district court, and a copy of such complaint shall be served on the director with the order to show cause. The director shall, at least two (2) days before the time set for hearing, file in the cause, and serve upon counsel for plaintiff an answer to the complaint, also in the ordinary form used in civil actions in the district court. Demurrers and motions directed to pleadings are not permissible in proceedings had under this section, but any questions raised by demurrer or motion in other actions may be raised in the answer. On the issues thus made on the complaint and answer, the court, or the judge thereof at chambers, at the time fixed for showing cause, or at such other time to which he, in his discretion, may continue the same, shall try the matter on the merits by hearing the allegations and proofs of the parties in the same manner as on the trial of ordinary civil actions in the district court, and the rules governing the trial of ordinary civil actions and for the production and



taking of evidence and hearing the examinations of witnesses and the entry of findings and judgments therein, shall prevail. In the event the director makes no appearance in the time limited, the court shall enter his default and proceed to hear the proofs of the plaintiff in like manner as in civil actions under similar circumstances, and enter judgment accordingly. The judgment entered either after hearing on the merits or by default, shall be final judgment from which either party shall have the right, by notice filed within twenty (20) days after entry, to appeal to the supreme court, in the same manner as from final judgment in a civil action. [I.C., § 26-1009, as added by 1979, ch. 41, § 2, p. 62.]

**Compiler's notes.** Former §§ 26-1009 — 26-1012 which comprised S.L. 1925, ch. 133, §§ 94-97, p. 190; am. 1929, ch. 237, § 1, p. 459; I.C.A., §§ 25-1009 — 25-1012, were repealed by S.L. 1979, ch. 41, § 1.

**26-1010. Director may appoint agents.** — The director may, under his hand and seal, appoint and authorize an agent to assist him or act for him in the performance of any powers or duties hereunder, the certificate of appointment to be filed in the office of said director, and a certified copy thereof delivered to such agent. Such agent and other employees hereinafter mentioned, shall receive a salary, to be fixed as hereinafter provided, for the time he is actually engaged in the performance of such duties. The director may also employ such attorneys and procure such expert accountants and other experts, assistants and employees as may be necessary in the liquidation and distribution of the assets of any such bank, and the performance of his duties hereunder, and may retain such of the officers or employees of such bank as he may deem necessary. He shall require from the agent appointed by him and from such of the assistants as will have charge of any of the assets of the bank such security for the faithful discharge of their duties as he may deem proper.

The director may also designate any one of the examiners of the department of finance as a general liquidating agent, with his office in the department of finance, for the purpose of liquidating any one or all state banks in the process of liquidation, and for the purpose of conducting such liquidation under the direction of said director; and may authorize the said liquidating agent to employ such clerical help as may be necessary.

Liquidating agents and experts and clerical assistants shall receive a salary to be fixed by the director and necessary traveling and hotel expenses incurred in the performance of official duties. The salary of the liquidating agent and experts and necessary clerical assistance [assistants] and other expenses incurred by the said liquidating agent shall be borne equally and ratably by the bank or banks in process of liquidation under such agent's charge in proportion to the total amount of resources of each of such banks. The funds for such expenses shall be raised by assessing each bank in ratio herein set forth and paying such expenses directly to the persons entitled thereto, without depositing any of such funds in the state treasury.

The compensation of the agents appointed by the director and of attorneys, expert accountants and other assistants, and all expenses of liquida-

tion and distribution of a bank whose assets and business shall be taken possession of by the director, shall be fixed by the director, but subject to be approved by the judge of the district court of the county in which the bank is located, on notice to such bank. Except in cases of emergency, the compensation to be paid to attorneys and expert accountants shall be fixed and approved before services are rendered. When the compensation shall have been so fixed and approved and the services rendered, the same shall be paid out of the funds of such bank in the hands of the director, and shall be a proper charge and lien on the assets of such bank as herein provided. [I.C., § 26-1010, as added by 1979, ch. 41, § 2, p. 62.]

**Compiler's notes.** Former § 26-1010 was repealed. See Compiler's notes, § 26-1009.

The bracketed word "assistants" in the third paragraph was inserted by the compiler.

**Collateral References.** 10 Am. Jur. 2d, Banks and Financial Institutions, §§ 1101, 1143.

9 C.J.S., Banks and Banking, §§ 151, 186.

Protective committee, its attorneys or employees, representing stockholders or creditors, right of, to compensation for expenses and services. 115 A.L.R. 559.

**26-1011. Federal Deposit Insurance Corporation — Right to act as receiver or liquidator.** — The Federal Deposit Insurance Corporation created by section 8 of the federal "Banking Act of 1933" (section 12B of the Federal Reserve Act, as amended) is hereby authorized and empowered to be and act without bond as receiver or liquidator of any banking institution, the deposits in which are to any extent insured by said corporation, and which shall have been closed on account of inability to meet the demands of its depositors, in lieu of the director of finance, but only if and when requested so to do by said director.

The director of the department of finance may, in his discretion, in the event of such closing tender to said corporation the appointment as receiver or liquidator of such banking institution, in his stead, and if the corporation accepts said appointment, the corporation shall have and possess all the rights, powers and privileges provided by the laws of this state with respect to the director of the department of finance acting as receiver or liquidator of a banking institution, and be subject to all the duties of such receiver or liquidator, except insofar as such rights, powers, privileges or duties are in conflict with the provisions of subsection (1) of section 12B of the Federal Reserve Act, as amended (section 8 of the "Banking Act of 1933").

The corporation shall not, however, without the consent of the director of the department of finance, continue to act as receiver or liquidator of any banking institution after the amount of the insured deposit liability of such banking institution, paid or assumed by the corporation, and the costs of liquidation paid or assumed by it have been repaid it, or after funds are available therefor. [I.C., § 26-1011, as added by 1979, ch. 41, § 2, p. 62.]

**Compiler's notes.** Former § 26-1011 was repealed. See Compiler's notes, § 26-1009.

Section 8 of the federal "Banking Act of 1933" (section 12B of the Federal Reserve Act, as amended), referred to herein, has been

superseded by the Federal Deposit Insurance Act, 12 U.S.C. § 1811 et seq.

The words enclosed in parentheses so appeared in the law as enacted.



**26-1012. Closed bank — Federal Deposit Insurance Corporation furnishing funds for payment of insured deposit liabilities — Subrogation.** — Whenever any banking institution shall have been closed as aforesaid, and said Federal Deposit Insurance Corporation shall pay or make available for payment the insured deposit liabilities of such closed institution, the corporation, whether or not it shall have become receiver or liquidator of such closed banking institution, as herein provided, shall be subrogated to all rights against such closed banking institution, of the owners of such deposits, in the same manner and to the same extent as subrogation of the corporation is provided for in subsection (1) of section 12B of said Federal Reserve Act, as amended (being section 8 of said “Banking Act of 1933”) in the case of the closing of a national bank, provided, that the rights of depositors and other creditors of such closed institution shall be determined in accordance with the applicable provisions of the laws of this state. [I.C., § 26-1012, as added by 1979, ch. 41, § 2, p. 62.]

**Compiler’s notes.** Former § 26-1012 was repealed. See Compiler’s notes, § 26-1009.

Section 12B of the Federal Reserve Act, as amended (being § 8 of the “Banking Act of 1933”), referred to herein has been super-

seded by the Federal Deposit Insurance Act, 12 U.S.C. § 1811 et seq.

The words enclosed in parentheses so appeared in the law as enacted.

**26-1013. Closed banks — Pledge or sale of assets by director or liquidator to Federal Deposit Insurance Corporation — Court order.** — With respect to any banking institution, which is now or may hereafter be closed on account of inability to meet the demands of its depositors or by action of the director of the department of finance or of a court or by action of its directors or in the event of its insolvency or suspension, the director of the department of finance and/or the receiver or liquidator of such institution with the permission of said director of finance may borrow from said corporation and furnish any part or all of the assets of said institution to said corporation as security for a loan from same, provided, that where said corporation is acting as such receiver or liquidator, the order of a court of record of competent jurisdiction shall be first obtained approving such loan. Said director upon the order of a court of record of competent jurisdiction, and upon a like order and with the permission of said director, the receiver or liquidator of any such institution may sell to said corporation any part or all of the assets of such institution.

The provisions of this section shall not be construed to limit the power of any banking institution, the director of the department of finance or receivers or liquidators to pledge or sell assets in accordance with any existing law. [I.C., § 26-1013, as added by 1979, ch. 41, § 2, p. 62.]

**Compiler’s notes.** Former § 26-1013, which comprised S.L. 1925, ch. 133, § 98, p. 190; I.C.A., § 25-1013, was repealed by S.L.

1967, ch. 161, § 10-102, effective at midnight on December 31, 1967.



**26-1014. Federal Deposit Insurance Corporation acting as liquidator — Possession and control of assets and business of bank.** — Upon the acceptance of the appointment of receiver or liquidator aforesaid by said corporation, and during its continuance as such receiver or liquidator, the possession and control of all the assets, business and property of such banking institution of every kind and nature shall pass to and vest in said corporation and without the execution of any instruments of conveyance, assignment, transfer or endorsement, with the same force and effect and to the same extent as in the director of the department of finance under like circumstances. [I.C., § 26-1014, as added by 1979, ch. 41, § 2, p. 62.]

**Compiler's notes.** Former § 26-1014 p. 62; am. 1959, ch. 90, § 1, p. 202 was which comprised S.L. 1925, ch. 133, § 99, p. 190; I.C.A., § 25-1014; am. 1943, ch. 30, § 1, repealed by S.L. 1979, ch. 41, § 1.

**26-1015. Enforcement of individual liability of directors of closed bank.** — Among its other powers, said corporation, in the performance of its powers and duties as such receiver or liquidator, when acting as such in lieu of the director of the department of finance, shall have the right and power upon the order of the court of record of competent jurisdiction to enforce any individual liability of the directors of any such banking institution. [I.C., § 26-1015, as added by 1979, ch. 41, § 2, p. 62.]

**Compiler's notes.** Former § 26-1015, which comprised S.L. 1943, ch. 28, § 1, p. 56, was repealed by S.L. 1967, ch. 161, § 10-102, effective at midnight on December 31, 1967.

**26-1016. Notice to creditors of insolvent bank.** — The director shall cause notice to be given by advertisement in a newspaper of general circulation in the town or city in which said bank is situated, if there be one, and if not, then in such other newspaper published in the state of Idaho, as the director shall designate, once a week for six (6) consecutive weeks, calling on all persons who have claims against said bank to present the same to the director or his duly authorized agent at a place to be specified in said notice, and to make sworn proof thereof, in form to be fixed by him, within the time specified in said notice, not less than thirty (30) days from the date of the last publication thereof. A copy of such notice shall be mailed to all persons whose names appear as creditors upon the books of the bank. [I.C., § 26-1016, as added by 1979, ch. 41, § 2, p. 62.]

**Compiler's notes.** Former § 26-1016, which comprised S.L. 1943, ch. 28, § 2, p. 56, was repealed by S.L. 1967, ch. 161, § 10-102, effective at midnight on December 31, 1967. **Cross ref.** Publication requirements, § 60-109.

#### DECISIONS UNDER PRIOR LAW

##### Evidence.

Evidence reviewed and held to justify finding of jury that no notice to depositor was mailed. Postcard notice is about as near to no notice as could be given. Testimony of mailing of cards to all depositors was entitled to no more weight than testimony of its failure of

delivery. *Hobson v. Security State Bank*, 56 Idaho 601, 57 P.2d 685 (1936).

The burden of proof is on the bank to prove that the statute of limitations has run against a depositor presenting and prosecuting a claim. *Hobson v. Security State Bank*, 56 Idaho 601, 57 P.2d 685 (1936).

**26-1017. Claims — Allowance and rejection.** — The director shall reject or allow all claims in (the) whole or in part, and on each claim allowed shall designate the order of its priority. If a claim is rejected or an order of priority allowed lower than that claimed, notice shall be given the claimant personally or by certified mail with a return receipt requested and an affidavit of the service of such notice, which shall be prima facie evidence thereof, filed in the office of the director. The action of the director shall be final unless an action be brought by the claimant against the bank in the proper court of the county where the bank is located within ninety (90) days after such service to fix the amount of the claim and its order of priority or either. An appeal from the director's allowance, either as to priority or amount, may also be taken to the district court of such county by any party in interest by serving on the director notice thereof, stating the grounds of objection and filing the same in said court within thirty (30) days after allowance. Within five (5) days after such notice, the director shall file in the court, and serve on the appellant, a copy of the claim and his reasons for allowance. The court or judge shall, after five (5) days' notice of time and place of hearing on the issues thus made, hear the proof of the parties and enter judgment reversing, affirming or modifying the director's action. [I.C., § 26-1017, as added by 1979, ch. 41, § 2, p. 62.]

**Compiler's notes.** Former §§ 26-1017, 26-1018 which comprised S.L. 1935, ch. 112, § 1, p. 262; I.C., § 26-1018, as added by 1976, ch. 248, § 1, p. 851 were repealed by S.L. 1979, ch. 41, § 1.

The word "the" in the first sentence was enclosed in parentheses by the compiler as surplusage.

**Cited in:** *Idah-Best, Inc. v. First Sec. Bank*, 99 Idaho 517, 584 P.2d 1242 (1978).

#### DECISIONS UNDER PRIOR LAW

##### **Subrogation of Surety.**

Where a county's deposits were adjudged as common claims, a surety paying the county deposits is entitled to assert a common claim

against the bank in the amount paid by the surety. *Aetna Cas. & Sur. Co. v. Wedgwood*, 57 Idaho 682, 69 P.2d 128 (1937).

**26-1018. Payment of claims.** — Claims presented to the director prior to the expiration of the time fixed in the notice to creditors therefor, and allowed by him, shall be paid in the order of priority hereinafter fixed. Those filed after such expiration and prior to one (1) year thereafter shall be entitled, after they have been allowed by the director, to share in the distribution of the assets of the bank only to the extent of the assets undistributed in the hands of the director and available for the payment of claims of their order of priority at the time such claims are filed, but as against other claims of their same order of priority, on which dividends have been paid, they shall be entitled to payment in a proportionate amount before further payments are made on such other claims. All claims filed after the expiration of one (1) year following the date fixed in the notice to creditors as the time for presentation of claims are not entitled to be allowed or paid unless all other creditors' claims of any kind or character, except claims of shareholders, based on stock or assessments paid on stock, shall have been fully paid and discharged, and a surplus remains in the hands of



the director, and then only from such surplus. [I.C., § 26-1018, as added by 1979, ch. 41, § 2, p. 62.]

**Compiler's notes.** Former § 26-1018 was repealed. See Compiler's notes, § 26-1017.

**Cited in:** *Idah-Best, Inc. v. First Sec. Bank*, 99 Idaho 517, 584 P.2d 1242 (1978).

**Collateral References.** 11 Am. Jur. 2d, Banks and Financial Institutions, §§ 1115, 1137.

9 C.J.S., Banks and Banking, §§ 196-201.

Right of one indebted to insolvent bank to set off deposits which he has made as trustee. 5 A.L.R. 83; 55 A.L.R. 822.

Right to set off deposit in insolvent bank against indebtedness to bank. 25 A.L.R. 938; 82 A.L.R. 665; 97 A.L.R. 588.

**26-1019. Claims — Order of payment — Priorities.** — The order of payment of the debts of a bank liquidated by the director shall be as follows:

(1) The expense of liquidation, including compensation of agents, employees and attorneys.

(2) All funds held by bank in trust.

(3) Debts due depositors, holders of cashier's checks, certified checks, drafts on correspondent banks, including protest fees, paid by them on valid checks or drafts presented after closing of the bank, pro rata. All deposit balances of other banks or trust companies and all deposits of public funds of every kind and character (except those actually placed on special deposit under the statutes providing therefor) including those of the United States, the state of Idaho, and every county, district, municipality, political subdivision or public corporation of this state, whether secured or unsecured, or whether deposited in violation of law or otherwise, are included within the terms of this subdivision and take the same priority as debts due any other depositor, anything in the statutes of the state of Idaho to the contrary notwithstanding.

(4) All other contractual liabilities pro rata.

(5) Interest on all foregoing classes of claims without regard to the priority of the principal computed as follows:

Savings accounts at the same rate they bore at the time of the closing of the bank; time certificates of deposit at the rate fixed in the certificate; all other contractual obligations bearing interest at the rate they bore at the time of closing until due by their terms; no interest to be compounded.

(6) Unliquidated claims for damages and the like.

Provided, however, that the director may, in his discretion, without regard to the priorities herein fixed in subdivisions 3, 4, 5 and 6 of this section, or in preference to the payment of any claims of creditors within these subdivisions, pay off and discharge any lien, claim or charge against the assets or property of the bank in his hands and pay out and expend such sums as he deems necessary for the preservation, maintenance, conservation and protection of any such assets and property, and likewise property on which the bank has liens by mortgage or otherwise; and he may also, in his discretion, create a fund or retain in his hands in preference to the claim of any creditors in the subdivisions above-mentioned moneys for the aforesaid purposes.

Collateral which shall have been put up or pledged as security for the payment of bills payable by any bank, or any loans or discounts which shall have been outstanding as rediscounts of any bank prior to the closing



thereof, shall not be available to the other creditors of such bank in whole or in part until such bills payable or rediscounts shall have been retired.

Deposits of any person, firm or corporation in a bank which is in the possession of the director, may be offset against any indebtedness, (subject to the conditions of the preceding paragraph of this section) due to such bank from such person, firm or corporation. All dividends when declared in favor of any creditor of the bank may be applied, in the discretion of the director, in satisfaction of the indebtedness, if any, due the bank from such creditor. [I.C., § 26-1019, as added by 1979, ch. 41, § 2, p. 62.]

**Compiler's notes.** The words enclosed in parentheses so appeared in the law as enacted.

**Cross ref.** Assigned claim may not be offset against obligation to bank, § 26-1020.

Depositor defined, § 26-106(15).

#### DECISIONS UNDER PRIOR LAW

##### ANALYSIS

General deposits.

Pledged notes.

Public funds.

Trust funds.

—Given priority.

—Special deposits.

##### General Deposits.

Where checks, drafts, or other evidences of debt are received in good faith as money deposits, and bank credits them as so much money, title to checks or drafts is immediately transferred to bank, and it becomes legally liable to depositor as for so much money deposited. *Callahan v. First State Bank*, 48 Idaho 57, 279 P. 414 (1929).

##### Pledged Notes.

Makers of notes who paid them to payee bank after they had been pledged but without notice of the pledge had no claim against the bank, after it closed. *Uhlig v. Diefendorf*, 53 Idaho 676, 26 P.2d 801 (1933).

##### Public Funds.

Although the deposit of a road district was made in violation of law, for want of proper security, it did not thereby become a trust fund. The legislative intent that deposit of public money, knowingly made by one having authority to make it, though unlawful, must in event of insolvency of bank be classified as a general deposit and not as a trust fund. *Bannock County v. Citizens' Bank & Trust Co.*, 53 Idaho 159, 22 P.2d 674 (1933); *Murphy v. Lumbermens State Bank & Trust Co.*, 57 Idaho 311, 65 P.2d 154 (1937).

##### Trust Funds.

##### —Given Priority.

Idaho law requires a receiver of a bank or financial institution to give priority to all funds held in trust. *FDIC v. Myhre*, 249 F.2d 887 (9th Cir. 1957).

##### —Special Deposits.

Checks and drafts left with bank by county treasurer to be held in escrow until bank furnishes security do not constitute true deposit. *Callahan v. First State Bank*, 48 Idaho 57, 279 P. 414 (1929).

Defunct bank being in possession of money which belonged to it in excess of trust funds belonging to depositor will be presumed to have paid out its own money in meeting its obligations. *Ivie v. W.G. Jenkins & Co.*, 53 Idaho 643, 26 P.2d 794 (1933).

Money placed with a bank to buy a bond remains the property of depositor and is held by the bank in trust within the meaning of former law regarding claims and priority of payment. *Ivie v. W.G. Jenkins & Co.*, 53 Idaho 643, 26 P.2d 794 (1933).

**Collateral References.** 11 Am. Jur. 2d, Banks, §§ 1138-1158.

9 C.J.S., Banks and Banking, §§ 202-225.

Trust or preference in respect of money used to purchase exchange or to be transmitted. 16 A.L.R. 190; 57 A.L.R. 1168; 84 A.L.R. 1470; 93 A.L.R. 938; 101 A.L.R. 631.

Right of owner of check which the drawer bank held for him at time it closed its doors to a preference. 17 A.L.R. 196.

Status of Christmas Club deposits as savings or as general deposit. 21 A.L.R. 1128.

Trust or preference in respect of money placed in bank for purpose of transaction with third persons. 31 A.L.R. 472; 93 A.L.R. 881.

Specified obligations, preference in respect of deposits designated for payment of. 32 A.L.R. 967.

Prerogative right of county or other political subdivision to preference. 36 A.L.R. 640; 52 A.L.R. 755; 90 A.L.R. 208.

Executors, administrators, testamentary trustees, or guardians, trust in respect of funds deposited by. 37 A.L.R. 120; 53 A.L.R. 564; 101 A.L.R. 602.

Taxes, preference in favor of individuals as

to funds deposited by them to credit of public treasurer in attempt to pay. 37 A.L.R. 130.

Waiver of state's priority by deposits on interest. 42 A.L.R. 1296.

Immaturity of claim at time of insolvency proceedings as affecting right to setoff. 43 A.L.R. 1325; 51 A.L.R. 1477.

Clearing house settlement, balance due other banks on, as preferred claim against insolvent bank. 44 A.L.R. 1535.

Power of corporation after expiration or forfeiture of its charter. 47 A.L.R. 1288; 97 A.L.R. 477.

Right of holder of certified check to preference out of assets of insolvent bank. 51 A.L.R. 1034.

Right in absence of statute to preference in respect of deposit of public funds in insolvent bank. 51 A.L.R. 1336; 103 A.L.R. 621.

Executors, administrators or testamentary trustees, preference in assets of insolvent bank or trust company in respect of funds which it held as. 56 A.L.R. 806; 83 A.L.R. 1110; 94 A.L.R. 1123.

State statutes relating to preferences among claims against insolvent debtors as affecting liability on stock in national bank. 58 A.L.R. 563.

Prerogative right of state to preference at common law. 65 A.L.R. 1331; 90 A.L.R. 184; 167 A.L.R. 640.

Estoppel as regards claim against insolvent bank. 69 A.L.R. 456.

Setoff as between claims by or against insolvent and claims by or against receiver arising from transaction after insolvency. 71 A.L.R. 804; 128 A.L.R. 809.

Depositor's right to preference in assets of insolvent bank because dissuaded by bank officials or employees from withdrawing deposit after insolvency. 80 A.L.R. 795.

Savings and commercial departments, preference in respect of assets as affected by bank's division into. 81 A.L.R. 1479; 89 A.L.R. 1218; 114 A.L.R. 680.

Following or identifying trust funds in assets of insolvent bank. 82 A.L.R. 46.

Investment, trust, or preference in assets of insolvent bank in respect of money left on deposit pursuant to agreement of bank to purchase bonds or make other investments for depositor. 82 A.L.R. 1292; 105 A.L.R. 516.

Garnishment of deposit by depositor's creditor as entitling latter to trust or preference and of assets of insolvent garnishee bank. 83 A.L.R. 1085.

Veteran's compensation or war risk insurance proceeds or pension money, preference in respect of deposit of. 83 A.L.R. 1089; 84 A.L.R. 1530.

Receiver, preference in assets of insolvent bank in respect of deposit by. 83 A.L.R. 1097.

Deferring payment of dividends while there are undetermined claims or preferences, duty and remedy as regards. 88 A.L.R. 1301.

Dividends from assets of insolvent bank and liability of creditors as stockholders, set-off as between. 91 A.L.R. 326.

Statutes or constitutional provisions in relation to priority or preference of deposits, construction and effect of. 93 A.L.R. 1017.

Excuses, time limitation as to filing of claims against insolvent bank as affected by excuses and the nature of such excuses. 109 A.L.R. 1415.

Special or class legislation, statute as to annulling bank charter and liquidation as. 111 A.L.R. 149.

Depositor's right to priority as based upon fact of bank's pledge of his note rendered deposit unavailable as setoff against note in hands of pledgee. 162 A.L.R. 1175.

**26-1020. Partial payment of claims — Calculation of dividends — Assignment of claims — Checks against closed bank. —** The director need not await the expiration of the time allowed for filing claims, as fixed in the notice to the creditors, for the payment of dividends, but he may, in his discretion, and if under the circumstances of the particular case he deems it expedient and safe, at any time after taking possession of said bank and prior to the expiration of such period fixed for filing of claims, if he has on hand in cash sufficient funds over and above the expenses of liquidation, make pro rata distribution to any class of creditors next entitled thereto, in the order of priority heretofore fixed, making such payment to said creditors as they appear on the books and records of the bank and determining the priority and basing his apportionment on the amount shown to be due by such books and records. At any time after the expiration of the date fixed for the presentation of claims against said bank and from time to time thereafter, when, in his discretion there are sufficient funds available therefor, the director shall, after making proper provision for the payment of



expenses of liquidation, declare and pay dividends to all creditors of such bank pro rata in the order of their priority. If, after the time fixed for presentation of claims against the bank has expired, it appears that any person, prior to the expiration of said period, or at any other time, has been paid more than the pro rata amount due him as compared with the amounts then paid other creditors, nothing more shall be paid said creditor until such time as the payment made other creditors shall place them on equal footing. In calculating dividends, all disputed claims and deposits shall be taken into account and the amount of dividends upon such disputed claims or deposits shall be held by the director until the justice and validity of such claims or deposits shall have been finally determined. Claims against any bank in process of liquidation may be assigned as a whole, but partial assignments of such claims shall not be valid against the director of the department of finance or his agents in charge of such bank, nor recognized by them. Assignments of claims shall be binding upon the director only after the same have been filed and allowed by the director but not before, and only then subject to the payment of the assignor's liabilities to the bank. Such assignment shall be made by filing written notice, signed by the original claimant, with the director or person in charge of said bank. No assigned claim may be offset against obligations due the bank. A check or draft drawn against any bank closed or taken possession of by the director, whether issued before or after closing thereof, shall not be recognized as a claim against said bank, or as an assignment of any amount, whether protested or not protested. [I.C., § 26-1020, as added by 1979, ch. 41, § 2, p. 62.]

**Collateral References.** 9 C.J.S., Banks and Banking, § 201, 226.

Applicability of constitutional or statutory provisions relating to added liability of stockholders to holders of stock issued, or stockholders of corporation organized, before their enactment. 72 A.L.R. 1252.

Constitutional objection to conferring judicial power upon administrative or executive officers, statute relating to closing of banks and assessments of stockholders as subject to. 78 A.L.R. 774.

Conservator, right of stockholder to set off his distributive share in assets of bank in hands of, against his statutory liability. 91

A.L.R. 234; 92 A.L.R. 1258; 107 A.L.R. 1431.

Action to enforce liability of third persons to bank, right of creditors of insolvent bank to maintain, and conditions of such right, when liquidating officer refuses or fails to enforce liability. 97 A.L.R. 169; 116 A.L.R. 783.

Agreement by creditors of bank postponing payment of their claim as affecting statutory liability of stockholders. 103 A.L.R. 756.

Limitations, suspension of, by liquidation, or other proceedings by government against bank, as regards choses in action belonging to bank, or stockholder's superadded liability. 122 A.L.R. 945.

**26-1021. Statement of condition.** — The director of the department of finance shall, within sixty (60) days after taking possession of any bank or trust company under the provisions of this chapter and at intervals of every six (6) months thereafter during the liquidation thereof and until depositors' claims against said bank or trust company have been fully paid or the assets available for such claims exhausted, make public a statement of the condition of such bank or trust company. [I.C., § 26-1021, as added by 1979, ch. 41, § 2, p. 62.]



**26-1022. Deposit of funds in director's hands.** — All funds in the hands of the director belonging to any bank in process of liquidation shall be deposited in his name as director in such banks within the state as may be selected and designated by him and subject to his checks as director of the department of finance. Provided, that any bank receiving such deposits shall file and keep on file with the director a surety bond, executed by some surety company authorized to transact business in the state of Idaho, in an amount not less than the amount of the sum on deposit, conditioned for the payment on demand of the full amount of such deposit, or in lieu of such bond, shall deposit with the director, securities in like amount to be approved by the director, as security for the payment of such deposits, but only approved securities as defined by the Public Depository Law, shall be accepted by the director. No deposit of such funds shall be made in any bank in excess of the penal amount of such bond or in excess of ninety percent (90%) of the market value of such approved securities. [I.C., § 26-1022, as added by 1979, ch. 41, § 2, p. 62.]

**Compiler's notes.** The Public Depository Law, referred to herein, is compiled as I.C., §§ 57-101 — 57-145.

**26-1023. Disposition of unclaimed funds.** — The director shall certify to the treasurer of the state a complete list of funds remaining in his hands uncalled for, which have been left in his hands in his official capacity, in trust for depositors in and creditors of any liquidated bank after they have been held by him for six (6) months from the date of the final liquidation of the institution. Along with this certificate, he shall transmit to the treasurer of the state the funds with accumulated interest thereon which he has so held in trust for six (6) months. A copy of such certificate shall also be filed with the state controller, who shall make a record thereof.

Any depositor or creditor of a liquidated bank who has not been paid the amount standing to his credit as thus certified to the state treasurer, may apply to the director for the amount due him, after it has been certified into the treasury of the state. The depositor or creditor shall make an affidavit and offer proof of his identity and of the amount due him by the liquidated bank. When satisfied as to the correctness of the claim and of the identity of the person, the director shall approve the claim and forward it to the state controller, who shall audit the same and if found correct issue his warrant payable to the depositor or creditor for the amount shown by the records to be due such depositor or creditor which shall be paid by the treasurer. [I.C., § 26-1023, as added by 1979, ch. 41, § 2, p. 62; am. 1994, ch. 180, § 43, p. 420.]

**Compiler's notes.** Section 241 of S.L. 1994, ch. 180 provided that such act should become effective on and after the first Monday in January, 1995 [January 2, 1995] if the amendment to the Constitution of Idaho changing the name of the state auditor to state controller [1994 S.J.R. No. 109, p. 1493] was adopted at the general election held on

November 8, 1994. Since such amendment was adopted, the amendment to this section by § 43 of S.L. 1994, ch. 180 became effective January 2, 1995.

Sections 42 and 44 of S.L. 1994, ch. 180 are compiled as §§ 25-3112 and 31-2307, respectively.

Section 241 of S.L. 1994, ch. 180 provided:

"This act shall be in full force and effect on and after the first Monday of January, 1995, if the state board of canvassers has certified that an amendment to the Constitution of the State of Idaho has been adopted at the general election of 1994 to change the name of the state auditor to state controller."

**Opinions of Attorney General.** This section, which deals with distribution of unclaimed property after the liquidation is completed, is not consistent with the Unclaimed Property Act. A transfer of the unclaimed

property should be made to the state treasurer pursuant to this section, and the treasurer then has a duty to comply with the Unclaimed Property Act by filing an unclaimed property report and transferring funds to the unclaimed property account. OAG 85-6.

**Collateral References.** Old bank deposits, validity, as applied to national banks, of statutes relating to disposition of. 151 A.L.R. 842.

#### **26-1024. Disposition of assets remaining after payment of claims.**

— Whenever the director has paid to each and every depositor and creditor of such bank whose claims shall have been duly approved and allowed as herein provided, the full amount thereof, and shall have made provisions for unclaimed and unpaid deposits and disputed claims and deposits, and shall have paid all the expenses of liquidation or, if the assets of said bank be insufficient for making said payments, then, whenever the director has liquidated all available assets and disbursed the same as herein provided, the director shall make application to the district court of the county in which such bank is located, or the judge thereof in chambers for an order authorizing the director, if there be remaining assets on hand, to surrender the same to the directors of said bank in office at the time of closing the same, as trustees for stockholders, or to such other person or persons, if any, as have been designated as trustees by the stockholders at a meeting lawfully called and assembled for such purpose, in like manner as any other stockholders' meeting. Said order shall also provide that upon the surrender of said assets, as in said order directed, and where there are no remaining assets, then, upon the entry of the order, the director shall be discharged from all further liability or responsibility in connection with the assets and affairs of said bank and that the charter of said bank shall be forfeited. The court may require such trustees to give bond in such amount as the court may fix, conditioned for the faithful performance of their duties. It shall be the duty of the said trustee or trustees to complete the liquidation of any remaining assets as rapidly as may be and to distribute the proceeds of the same among the stockholders according to their respective rights. On application for such order, the bank shall be made a party by notice issued on order of the court or judge, in lieu of summons, but served in like manner, and the hearing of any such application may be had at any time in court or in chambers, as the court may order, after five (5) days' notice of the hearing. [I.C., § 26-1024, as added by 1979, ch. 41, § 2, p. 62.]

**Cross ref.** "Depositor" defined, § 26-106.

"Director" defined, § 26-106.

**26-1025. Borrowing money to facilitate liquidation or reopening of bank.** — The director of the department of finance, when he deems it to be for the best interest of the depositors of any closed bank, shall be and hereby is authorized and empowered in his official capacity, without personal liability, and under orders of the court, to borrow from any federal



agency, or any corporation or person, for the purpose of facilitating the liquidation of such bank and making distribution to depositors, and/or for the purpose of reorganizing or reopening such bank, and as security for the payment of any money so borrowed, the director may pledge or otherwise hypothecate or mortgage all or any part of the assets of such bank and enter into all such contracts or agreements in connection therewith as he may deem prudent and advisable. [I.C., § 26-1025, as added by 1979, ch. 41, § 2, p. 62.]

**26-1026. Reopening of bank — Unsecured depositors and creditors — Acceptance of plan — Certificate of approval.** — Whenever the director of the department of finance believes it to be for the best interest of the unsecured depositors and creditors of any bank that any proposed plan for maintaining or restoring the solvency of such bank, or for effecting any merger or reorganization thereof, should be carried out and made effective, the director shall issue his certificate of approval, and thereupon all other unsecured depositors and unsecured creditors of such bank shall be held to be subject to the agreement and plan so approved by the director and all depositors and creditors shall be bound thereby and their deposits and claims shall be subject thereto to the same extent and effect as if they had joined in the execution thereof, and their deposits and claims shall be paid in the manner provided in the plan so approved, as aforesaid, and not otherwise. [I.C., § 26-1026, as added by 1979, ch. 41, § 2, p. 62.]

**26-1027. Public funds on deposit — Joinder of official in plan — Bonds securing deposits unaffected.** — Public officers and governing boards having control of public funds on deposit in any such bank are authorized to join in any plan approved as provided in section 26-1026, Idaho Code, if, in the judgment of such officers or boards, the plan is for the best interest of all persons concerned, but no such agreement shall release any surety on any bond securing public deposits or public funds, or waive any security held for any preference given to such public funds under any law of this state, or relieve any officer, or the sureties of his official bond, of the liability, if any, for such deposit, and the time for the repayment of public funds shall in no event be extended for a longer period than six (6) months from the date of said certificate of the director of the department of finance. [I.C., § 26-1027, as added by 1979, ch. 41, § 2, p. 62.]

## CHAPTER 11

### SUPERVISION BY DEPARTMENT OF FINANCE

#### SECTION.

26-1101. Administration — Rules and powers.

26-1102. Examination by department.

26-1103. Refusal to submit to examination.

26-1104. Fees.

26-1105. Directors to be advised of conditions.

26-1106. Reports of bank.

#### SECTION.

26-1107. Reports — Duties of department of finance.

26-1108. Failure to transmit reports.

26-1109. Books and accounts.

26-1110. Proof that services performed will be subject to regulation and examination.

26-1111. Records not public.



## SECTION.

26-1112. Penalty for disclosure of confidential information.

26-1113. Impairment of capital — Assessment.

26-1114. Removal of directors, officers, or employees.

## SECTION.

26-1115. Engaging in unsafe or unsound practices — Cease and desist orders — Injunction.

26-1116. Civil enforcement.

26-1117. Power of the court to grant relief.

**26-1101. Administration — Rules and powers.** — (1) Every bank and bank holding company shall be subject to the inspection and supervision of the director of the department of finance as provided in this act.

(2) The director may from time to time promulgate, amend and rescind rules necessary or proper to carry out the provisions of this act. No rule may be adopted unless the director finds that the action is necessary or appropriate for the protection of the interests of bank depositors or for the welfare of banks and consistent with the purpose of this act.

(3) Notwithstanding any other provision of the Idaho bank act, but subject to the limitations provided for in this section:

(a) A bank may engage in any activity in which it could engage, exercise any power it could exercise, or make any loan or investment which it could make if it were operating as a national bank or which has been approved by the responsible federal agency for any state-chartered bank in the United States.

(b) Before engaging in any activity or exercising any power afforded under this subsection (3), a bank shall first notify the director of its intent to do so. This notice shall be sent to the director by U.S. mail, postage prepaid, certified or registered, with return receipt requested. Should the director take no action on the request within twenty (20) days of delivery to the director, the right to engage in the action or power so requested shall be deemed granted.

(c) Should the director deny the request, the affected bank shall have the right to request a hearing before the director, which hearing shall be held within thirty (30) days of the date of the denial.

(d) The director shall have the discretion to deny any request which is inconsistent with the purposes of the Idaho bank act.

(e) No such approval shall operate to deny the director of any of his authority under the Idaho bank act and such permitted activity shall be subject to supervision by the director.

(f) The director may, by order, waive or modify any requirement under this act if the corresponding federal requirement for national banks is eliminated or modified.

(4) Banks which are subsidiaries of bank holding companies may receive deposits, renew time deposits, close loans, service loans, and receive payments on loans as agent for other depository institutions which are subsidiaries of the same bank holding company.

(5) All rules must be promulgated pursuant to the provisions of chapter 52, title 67, Idaho Code. Unless expressly provided in the Idaho bank act, proceedings under the Idaho bank act shall not be considered "contested cases" under chapter 52, title 67, Idaho Code. [I.C., § 26-1101, as added by 1979, ch. 41, § 2, p. 62; am. 1995, ch. 99, § 5, p. 299.]

**Compiler's notes.** Former §§ 26-1101 — 26-1113 which comprised S.L. 1925, ch. 133, §§ 85, 86, 100-105, 107, 108, p. 190; I.C.A., §§ 25-1101 — 25-1110; 1945, ch. 71, §§ 1, 2, p. 94; am. 1951, ch. 139, § 5, p. 324; I.C., § 26-1113, as added by 1970, ch. 253, § 7, p. 671, were repealed by S.L. 1979, ch. 41, § 1. The words "this act" refer to S.L. 1979, ch.

41 compiled as §§ 26-101 — 26-1319.

Sections 4 and 6 of S.L. 1995, ch. 99 are compiled as §§ 26-710 and 26-1104, respectively.

**Cross ref.** Administrative procedure, § 67-5201 et seq.

Definitions, § 26-106.

**26-1102. Examination by department.** — The director may examine no less often than once in eighteen (18) months, and more frequently whenever he shall deem it necessary, all records and other documents in the possession of or relating to the bank, bank trust department including records in the custody of a data processor or other person or company. For this purpose, the director shall have authority to demand and inspect all books, papers, moneys, notes, bonds, or evidences of debt of such bank and may examine on oath any of the directors, officers, agents, employees, customers, or depositors of such bank. Any willful false swearing in any examination shall be deemed perjury. During examinations, the directors, officers and employees shall give any assistance required by the director, but no examiner shall interfere with the routine duty of such directors, officers and employees.

Whenever it shall come to the notice of the director that any bank has failed or refused to comply with any of the provisions of this act, the director is authorized to make a special examination of said bank and to charge and collect for such special examination; and to continue such examinations and charges at intervals of not less than thirty (30) days until such provisions are complied with.

The director may in his discretion at any time omit his examination of any bank as above required and accept in lieu thereof the findings or result of an examination of such bank made by any bank regulatory or insuring agency of the United States authorized to make such examination. [I.C., § 26-1102, as added by 1979, ch. 41, § 2, p. 62.]

**Compiler's notes.** Former § 26-1102 was repealed. See Compiler's notes, § 26-1101.

For words "this act" see Compiler's notes, § 26-1101.

**Sec. to sec. ref.** This section is referred to in § 26-505.

**Collateral References.** 11 Am. Jur. 2d, Banks and Financial Institutions, §§ 1217, 1219.

9 C.J.S., Banks and Banking, §§ 10-14, 27

Existence of fiduciary, relationship between bank and depositor or customer so as to impose special duty of disclosure upon bank. 70 A.L.R. 3d 1344.

Bank examiners, use or publication of reports of, or information obtained by, as affected by their alleged confidential character. 123 A.L.R. 1278.

**26-1103. Refusal to submit to examination.** — Whenever any officer, director or employee of any bank or any data processor or other person or company having custody of books or records of any bank shall refuse to submit the books, papers and concerns of such bank to the inspection of the department of finance or refuse to be examined on oath touching the affairs or concerns of the bank, the director may, in his discretion, apply to the district court within the jurisdiction of which the home office of the bank is located for an injunction requiring the officer to allow such inspection. Upon



application by the director, the court shall issue such an injunction. [I.C., § 26-1103, as added by 1979, ch. 41, § 2, p. 62.]

Compiler's notes. Former § 26-1103 was repealed. See Compiler's notes, § 26-1101.

Cross ref. Duty of director when bank fails to comply with provisions of law, § 26-1102.

**26-1104. Fees.** — (1) On January 15 of each year, the director shall fix and collect from each bank a fee based upon the amount of the total assets of the bank as of December 31 of the preceding calendar year, which fees shall not exceed the amounts set forth in the following schedule:

TOTAL ASSETS	MAXIMUM FEE
\$0 to \$1 million .....	\$1,500 Flat Fee
\$1 million to \$10 million .....	\$2,000 + \$.25 per thousand dollars of assets in excess of \$1 million
\$10 million to \$50 million .....	\$4,250 + \$.19 per thousand dollars of assets in excess of \$10 million
\$50 million to \$100 million .....	\$11,850 + \$.12 per thousand dollars of assets in excess of \$50 million
\$100 million to \$500 million .....	\$17,850 + \$.10 per thousand dollars of assets in excess of \$100 million
\$500 million to \$1 billion .....	\$57,850 + \$.09 per thousand dollars of assets in excess of \$500 million
\$1 billion to \$3 billion .....	\$102,850 + \$.08 per thousand dollars of assets in excess of \$1 billion
\$3 billion to \$10 billion .....	\$262,850 + \$.07 per thousand dollars of assets in excess of \$3 billion
\$10 billion to \$20 billion .....	\$369,425 + \$.03 per thousand dollars of assets in excess of \$10 billion
\$20 billion and over .....	\$689,425 + \$.02 per thousand dollars of assets in excess of \$20 billion

(2) In addition to the foregoing each bank shall pay to the director an additional sum not to exceed one hundred dollars (\$100) for each office and branch office maintained by said bank. The director shall collect from each bank for each special examination of its condition an amount sufficient to reimburse the director for the actual expenses incurred in connection therewith.

(3) For banks operating in Idaho with a home state other than Idaho, the director shall, in his discretion, set annual fees on any basis, provided that such fees shall not be higher than if only the branches operating solely in Idaho were considered in making the fee calculation. Under this subsection (3), the director, in his discretion, shall adjust annual fees according to the level of participation of the department of finance in the supervision process, subject to the maximum fee provided in subsection (1) of this section.

(4) For banks chartered under this act with branches in states other than Idaho pursuant to chapter 16, title 26, Idaho Code, the director shall, in his discretion, set annual fees on any basis, provided that such fees shall not be any higher than if the branches operated outside Idaho were not a factor in the fee calculation.

(5) All fees, fines, examination and miscellaneous charges collected by the director pursuant to the Idaho bank act shall be deposited into the finance



administrative account pursuant to section 67-2702, Idaho Code. [I.C., § 26-1104, as added by 1979, ch. 41, § 2, p. 62; am. 1980, ch. 169, § 1, p. 361; am. 1984, ch. 47, § 1, p. 76; am. 1995, ch. 99, § 6, p. 299; am. 1997, ch. 225, § 3, p. 661.]

**Compiler's notes.** Former § 26-1104 was repealed. See Compiler's notes, § 26-1101.

The Idaho bank act, referred to herein, is compiled as §§ 26-101 — 26-1319.

Section 2 of S.L. 1984, ch. 47 is compiled as § 26-1836 (now repealed).

Sections 5 and 7 of S.L. 1995, ch. 99 are compiled as §§ 26-1101 and 26-1116, respectively.

Sections 2 and 4 of S.L. 1997, ch. 225 are compiled as §§ 26-311 and 26-1604, respectively.

**26-1105. Directors to be advised of conditions.** — The department of finance shall, after each examination, address a letter to the president or chairman of the board of directors, calling attention to the condition of the bank at the time of examination. Such letter from the department shall be read at the first meeting of the board of directors following its receipt and the bank or company's minute book shall show the receipt of such letter and the reply thereto as approved by the directors. [I.C., § 26-1105, as added by 1979, ch. 41, § 2, p. 62.]

**Compiler's notes.** Former § 26-1105 was repealed. See Compiler's notes, § 26-1101.

**26-1106. Reports of bank.** — Every bank shall make to the department of finance not less than three (3) reports during each calendar year at such times as reports are called for by the director. The department of finance shall prescribe the form of such reports and they shall be signed and verified by the oath or affirmation of one [1] of the officers of such bank and attested by at least two (2) of the directors. They shall be forwarded to the department within fifteen (15) days after the receipt of the call therefor. Such report shall be published in a newspaper in the city or county in which said bank is located, or in a paper published nearest to such town, and in the same form as made to the department. Proof of publication shall be furnished to said department within thirty (30) days after receipt of the aforesaid call.

The department of finance shall also have the power to call for special reports from any bank whenever in its judgment the same is necessary to inform the department fully of the condition of such bank. It shall not be necessary for such bank to publish such special report. [I.C., § 26-1106, as added by 1979, ch. 41, § 2, p. 62.]

**Compiler's notes.** Former § 26-1106 was repealed. See Compiler's notes, § 26-1101.

The bracketed number "1" in the first paragraph was inserted by the compiler.

**26-1107. Reports — Duties of department of finance.** — The department of finance shall receive and place on file in the office of the department the reports to be made by the banks under this act and shall prepare and furnish, on demand, to all the banks required to report blank forms for such statements or reports. [I.C., § 26-1107, as added by 1979, ch. 41, § 2, p. 62.]

**Compiler's notes.** Former § 26-1107 was repealed. See Compiler's notes, § 26-1101.

For words "this act" see Compiler's notes, § 26-1101.

**26-1108. Failure to transmit reports.** — Every bank failing to make and transmit to the department of finance any of the reports required by this act, shall at the discretion of the director, be subject to a forfeiture of fifty dollars (\$50.00) a day after the time required for making such reports. Whenever any bank fails or refuses to pay the forfeiture herein imposed for a failure to make and transmit such report, the director is hereby authorized to institute proceedings to recover the forfeiture, together with interest, attorney's fees and costs. [I.C., § 26-1108, as added by 1979, ch. 41, § 2, p. 62.]

**Compiler's notes.** Former § 26-1108 was repealed. See Compiler's notes, § 26-1101.  
For words "this act" see Compiler's notes, § 26-1101.

**Collateral References.** 9 C.J.S., Banks and Banking, §§ 36, 38, 39.

**26-1109. Books and accounts.** — Whenever it appears to the department of finance that any bank does not keep books and accounts in such manner as to enable it to readily ascertain the true condition of such bank, or that such books and accounts are not kept in a manner which will minimize, as far as possible, loss through dishonesty of its officers or employees or otherwise, the department shall have power to require the officers of such bank or any of them, to open and keep such books or accounts as the department may, in its discretion, determine and prescribe for the purpose of keeping accurate and convenient records of the transactions and accounts of such bank.

The directors of any bank shall, within ten (10) days from receipt by the bank of a written statement from the department that the bank's internal auditing procedures are inadequate or deficient in any respect in the opinion of the department, retain, at the bank's sole expense, an independent licensed certified public accountant, approved by the director, to forthwith make an audit of the bank, and upon completion thereof a certified copy of the audit shall be delivered to the department. [I.C., § 26-1109, as added by 1979, ch. 41, § 2, p. 62.]

**Compiler's notes.** Former § 26-1109 was repealed. See Compiler's notes, § 26-1101.

**26-1110. Proof that services performed will be subject to regulation and examination.** — No bank subject to examination by the department of finance may cause to be performed, by contract or otherwise, any bank services for itself, whether on or off its premises, unless assurances satisfactory to the department of finance are furnished to such department by both the bank and the party performing such services that the performance thereof for any such bank will be subject to regulation and examination by the department of finance to the same extent as if such services were being performed by the bank itself on its own premises. [I.C., § 26-1110, as added by 1979, ch. 41, § 2, p. 62.]



**Compiler's notes.** Former § 26-1110 was repealed. See Compiler's notes, § 26-1101.

**26-1111. Records not public.** — (1) The department of finance shall keep proper books and records of all regulatory acts, matters and things done by it under the provisions of chapters 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 18, 21, 26, 32, 33, 34, 35 and 36, title 26, Idaho Code, as records of its office, but the same shall be subject to disclosure according to chapter 3, title 9, Idaho Code, except as otherwise provided in this section and in sections 26-1112 and 67-2743E, Idaho Code.

(2) All written communications and copies thereof, between the department, the director, department employees and any bank, bank holding company, trust company, savings and loan association and credit union which relate in any manner to the examination or condition of the financial institution, are the property of the department of finance and, if acquired by any person, shall be returned to the department upon written demand.

(3)(a) The director of the department of finance, any federal bank or other financial institution regulatory or supervisory agency, and any bank, bank holding company, trust company, savings and loan association, or credit union incorporated or chartered under title 26, Idaho Code, or under federal law or the law of any state and doing business in the state of Idaho, shall each have a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications, and the contents of any documents relating to any confidential communications, between the financial institution and the department of finance or federal bank or financial institution regulatory or supervisory agency made during the regulatory relationship.

(b) A communication is confidential if it is made during the regulatory relationship between the department of finance or the federal bank or other financial institution regulatory or supervisory agency and any such bank, bank holding company, trust company, savings and loan association or credit union, and if the communication is not designed or intended for disclosure to any other parties.

(c) The privilege may be claimed by the financial institution or by the department of finance or the federal bank or other financial institution regulatory or supervisory agency, or by the lawyer for either. The privilege may be waived only in accordance with this section and sections 26-1112 and 67-2743E, Idaho Code.

(d) The director of the department of finance or the appropriate officer or employee of the federal bank or other financial institution regulatory or supervisory agency may disclose confidential communications between the department or agency and financial institutions to the court, in camera, in a civil action. Such disclosure shall also be a privileged communication and the privilege may be claimed by the director, officer or employee or his lawyer.

(e) No sanction may be imposed upon any financial institution as a result of the claim of a privilege by the financial institution or the director of the department of finance or the officer or employee of the federal supervisory



agency under this section. [I.C., § 26-1111, as added by 1979, ch. 41, § 2, p. 62; am. 1990, ch. 213, § 21, p. 480; am. 1993, ch. 187, § 1, p. 477; am. 2000, ch. 288, § 2, p. 970.]

**Compiler's notes.** Former § 26-1111 was repealed. See Compiler's notes, § 26-1101.

For words "this act" see Compiler's notes, § 26-1101.

Section 20 of S.L. 1990, ch. 213 is compiled as § 25-2727.

Sections 1 and 3 of S.L. 2000, ch. 288, are compiled as §§ 26-101 and 26-1203.

Chapter 19, Title 26, Idaho Code, referred to in this section, has been repealed.

**Sec. to sec. ref.** This section is referred to in § 67-2743E.

## **26-1112. Penalty for disclosure of confidential information. —**

(1) Neither the department of finance, its director nor its employees shall disclose to any person or agency any fact or information obtained in the course of business of the department under this act, except in the following cases:

(a) When by the terms of this act or chapter 3, title 9, Idaho Code, it is made the duty of the department to make public records and publish the same.

(b) When the department is required by law to take special action regarding the affairs of any bank.

(c) When called as a witness in any criminal proceeding in a court of competent jurisdiction, provided that the court must review such information in chambers to determine the necessity of disclosing such information, and subject to the privilege provided by subsection (3) of section 26-1111, Idaho Code.

(d) When, in the case of a problem bank, it is necessary or advisable, in the discretion of the director, for the good of the public or of the depositors.

(e) When, in the discretion of the department, it is advisable to disclose any such information to a state or federal bank supervisory agency.

(2) Any person violating the provisions of this section shall be guilty of a felony and conviction shall subject the offender to a forfeiture of his office or employment. [I.C., § 26-1112, as added by 1979, ch. 41, § 2, p. 62; am. 1990, ch. 213, § 22, p. 480; am. 1993, ch. 187, § 2, p. 477.]

**Compiler's notes.** Former § 26-1112 was repealed. See Compiler's notes, § 26-1101.

For words "this act" see Compiler's notes, § 26-1101.

Section 23 of S.L. 1990, ch. 213 is compiled as § 26-2224.

Section 3 of S.L. 1993, ch. 187 is compiled as § 67-2743E.

Section 111 of S.L. 1990, ch. 213 read, "Sections 1 and 2 of this act shall be in full

force and effect on and after July 1, 1990. Sections 3 through 110 of this act shall be in full force and effect on and after July 1, 1993." Approved April 5, 1990.

Section 111 of S.L. 1990, ch. 213 as amended by § 16 of S.L. 1991, ch. 329 read, "Sections 1, 2, 46 and 47 of this act shall be in full force and effect on and after July 1, 1990. All other sections of this act shall be in full force and effect on and after July 1, 1993."

## **DECISIONS UNDER PRIOR LAW**

### **ANALYSIS**

Disclosure by employee.

Disclosure to depositor's employer.

### **Disclosure by Employee.**

The legislature of Idaho has recognized the

sanctity of the privacy of bank accounts by enactment of this section which makes it punishable for an employee of the department of finance to disclose any facts or information obtained except under limitation prescribed by the Code. *Peterson v. Idaho First Nat'l*

Bank, 83 Idaho 578, 367 P.2d 284, 92 A.L.R.2d 891 (1961).

**Disclosure to Depositor's Employer.**

The claimed discretionary power assumed by the bank manager in contacting depositor's employer and showing him the ledger record

of the depositor's personal account, showing checks returned for "not sufficient funds," did not dispense with the necessity of assent to such disclosure by the depositor. *Peterson v. Idaho First Nat'l Bank*, 83 Idaho 578, 367 P.2d 284, 92 A.L.R.2d 891 (1961).

**26-1113. Impairment of capital — Assessment.** — Notwithstanding any law of this state to the contrary, the stock of a bank chartered by the state of Idaho shall be assessable. Whenever the director has reason to believe that the capital and surplus of any bank is impaired or reduced below the amount required by the director at the time the bank's charter was issued or an amount which the director reasonably believes to be necessary for the protection of the depositors of the bank, it shall be the duty of the director to examine said bank and ascertain the facts. In case he finds an impairment or reduction of capital and surplus, he shall order the bank to make good the deficiency within thirty (30) days after the date of the order. The directors of the bank upon which an order shall have been made, shall levy an assessment upon the stock of the bank to repair the capital deficiency. The director shall cause notice of the order and the amount of the assessment to be given to each stockholder of the bank. Notice shall be given by a written notice mailed to each stockholder at his last known address or served personally upon him. If any stockholder shall refuse or neglect to pay the assessment specified in the notice within ten (10) days from the date of mailing or service upon him of the notice, the directors of the bank shall have the right to sell the stock of such stockholder, at public auction. Previous notice of such sale shall be given ten (10) days in advance of the date of the sale in a newspaper of general circulation in the county where the principal place of business of the bank is located. A copy of the notice of sale shall also be served personally on the stockholder or by mailing same to his last known address ten (10) days before the day fixed for the sale. Such stock may be sold at private sale and without such public notice; provided that an offer in writing shall first be obtained and a copy thereof served upon the owner of record of the stock sought to be sold, either personally or by mailing a copy of the offer to his last known address. If, after service of the offer, the owner shall refuse or neglect to pay the assessment within two (2) weeks from the time of the service of the offer, the directors may accept the offer and sell the stock to the person(s) making the offer, or to any other person(s) making a larger offer than the offer submitted to the stockholder. Stock shall in no event be sold for less than the amount of the assessment called for and the expense of the sale.

The stockholder whose shares of stock are to be sold shall return the certificates evidencing such shares to the bank prior to the date the shares will be sold.

Out of the proceeds of the stock so sold, the directors shall pay the amount of assessment levied thereon and the necessary costs of sale, and the balance, if any, shall be paid to the person or persons whose stock has thus been sold. A sale of stock as herein provided shall effect an absolute



cancellation of the outstanding certificate or certificates evidencing the stock so sold and shall make the same null and void, and a new certificate shall be issued to the purchaser thereof. [I.C., § 26-1113, as added by 1979, ch. 41, § 2, p. 62.]

**Compiler's notes.** Former § 26-1113 was repealed. See Compiler's notes, § 26-1101. Banks and Financial Institutions, §§ 296-299, 248, 250.

**Collateral References.** 10 Am. Jur. 2d, 9 C.J.S., Banks and Banking, § 51.

**26-1114. Removal of directors, officers, or employees.** — Any director, officer or employee of any bank found by the director to be negligent, dishonest, reckless or incompetent in the performance of his official duties, shall be removed from office by the board of directors of such bank on the written order of the director. If the directors neglect or refuse to remove such director, officer or employee, in the event any losses accrue to such bank thereafter by reason of the negligence, dishonesty, recklessness or incompetency of such director, officer or employee, the written order of the director shall be deemed to be conclusive evidence of the negligence of the directors failing to act upon the same in any action brought against them, or any of them, for recovery of such losses. The director, officer or employee affected by order of the director may petition the district court in the judicial district in which the bank is located to set aside the order of the director. Upon the filing of such petition the court shall have the jurisdiction to affirm, set aside, or modify the order of the director. If the directors fail or neglect to remove such director, officer or employee, and the director of the department of finance has reasonable cause to believe that the continued participation in the affairs of the bank by the director, officer or employee will place the bank in an unsafe or unsound condition, the director of the department of finance may apply to the district court for a temporary restraining order and injunction preventing the participation of the director, officer or employee in the affairs of the bank. The findings of the director as to the facts, if supported by substantial evidence, shall be conclusive that the bank director, officer or employee who is the subject of an order for removal by the director of the department of finance is or has been negligent, dishonest, reckless or incompetent in the performance of his duties. [I.C., § 26-1114, as added by 1979, ch. 41, § 2, p. 62.]

**26-1115. Engaging in unsafe or unsound practices — Cease and desist orders — Injunction.** — (1) If, in the opinion of the director of the department of finance, any bank is engaging or has engaged, or the director has reasonable cause to believe that the bank is about to engage in an unsafe or unsound practice in conducting the business of such bank, or is violating or has violated, or the director has reasonable cause to believe that the bank is about to violate a law, rule, or any condition imposed in writing by the director in connection with the granting of any application or other request by the bank or any written agreement entered into with the director, the director may issue and serve upon the bank a notice of charges in respect



thereof. The notice shall contain a statement of the facts constituting the alleged violation or violations or the unsafe or unsound practice or practices, and shall fix a time and place at which a hearing will be held to determine whether an order to cease and desist therefrom should issue against the bank. Such hearing shall be fixed for a date not earlier than twenty (20) days nor later than sixty (60) days after service of such notice unless an earlier or a later date is set by the department of finance at the request of the bank. Unless the bank shall appear at the hearing by a duly authorized representative, it shall be deemed to have consented to the issuance of the cease and desist order. In the event of such consent, or if upon the record made at the hearing, the director shall find that any violation or unsafe or unsound practice has occurred or will occur, the director may issue and serve upon the bank an order to cease and desist from any such violation or practice. Such order may, by provisions which may be mandatory or otherwise, require the bank and its directors, officers, employees, and agents to cease and desist from the same and further to take affirmative action to correct the conditions resulting from any such violation or practice.

(2) A cease and desist order shall become effective at the time specified therein and shall remain effective and enforceable as provided therein, except to such extent as it is stayed, modified, terminated, or set aside by action of the director or a reviewing court.

(3) Whenever the director of the department of finance shall determine that the violation or threatened violation or the unsafe or unsound practice or practices, specified in the notice of charges served upon the bank pursuant to subsection (a) of this section, or the continuation thereof, is likely to cause insolvency or substantial dissipation of assets or earnings of the bank, or is likely to otherwise seriously prejudice the interests of its depositors, the director may issue a temporary order requiring the bank to cease and desist from any such violation or practice. Such order shall become effective upon service upon the bank and, unless set aside, limited, or suspended by a court in proceedings, authorized by subsection (b) of this section, shall remain effective and enforceable pending the completion of the administrative proceedings pursuant to such notice and until such time as the director shall dismiss the charges specified in such notice, or if a cease and desist order is issued against the bank, until the effective date of any such order.

(4) Within ten (10) days after the bank concerned has been served with a temporary cease and desist order, the bank may apply to the district court for the judicial district in which the home office of the bank is located, for an injunction setting aside, limiting, or suspending the enforcement, operation, or effectiveness of such order pending the completion of the administrative proceedings pursuant to the notice of charges served upon the bank under subsection (a) of this section, and such court shall have jurisdiction to issue such injunction.

(5) In the case of violation or threatened violation of, or failure to obey, a temporary cease and desist order issued pursuant to subsection (a) of this

section, the director of the department of finance may apply to the district court within the jurisdiction of which the home office of the bank is located, for an injunction to enforce such order, and if the court shall determine that there has been such violation or threatened violation or failure to obey, it shall be the duty of the court to issue an injunction. [I.C., § 26-1115, as added by 1979, ch. 41, § 2, p. 62.]

**Compiler's notes.** The references in this section to subsections (a) and (b) of this section should apparently be instead to subsections (1) and (2), respectively.

tions (1) and (2), respectively.

**Sec. to sec. ref.** This section is referred to in §§ 26-602 and 26-1211.

**26-1116. Civil enforcement.** — (1) If the director believes that any person, not authorized to engage in banking business or trust business by the laws of this state or the United States, has engaged or is about to engage in any act or practice constituting a violation of any provision of the Idaho bank act or any rule or order hereunder, the director may:

- (a) Issue a cease and desist order;
- (b) Issue an order, pursuant to chapter 52, title 67, Idaho Code, imposing a civil penalty in an amount which may not exceed twenty-five thousand dollars (\$25,000) for any single violation or one hundred thousand dollars (\$100,000) for multiple violations in a single proceeding or a series of related proceedings; or
- (c) Initiate any of the actions specified in subsection (2) of this section.

(2) The director may institute any of the following actions in the appropriate courts of this state, or in the appropriate courts of another state, in addition to any legal or equitable remedies otherwise available:

- (a) An action for a declaratory judgment;
- (b) An action for a permanent or temporary injunction, restraining order or writ of mandamus to enjoin the violation and to ensure compliance with the provisions of the Idaho bank act or any rule or order of the director;
- (c) An action for disgorgement and other equitable remedies; and
- (d) An action for appointment of a receiver or conservator for the defendant or the defendant's assets. [I.C., § 26-1116, as added by 1995, ch. 99, § 7, p. 299.]

**Compiler's notes.** Section 6 of S.L. 1995, ch. 99 is compiled as § 26-1104.

**26-1117. Power of the court to grant relief.** — (1)(a) Upon a showing by the director that a person, not authorized to engage in banking business by the laws of this state or the United States, has violated, or is about to violate, any provision of the Idaho bank act or any rule or order of the director, the court may grant appropriate legal or equitable remedies.

(b) Upon a showing of a violation by a person, not authorized to engage in banking business or trust business by the laws of this state or the United States, of the provisions of the Idaho bank act or a rule or order of the director, the court, in addition to traditional legal and equitable remedies, including temporary restraining orders, permanent or temporary injunc-

tions, and writs of prohibition or mandamus, may grant the following special remedies:

- (i) Imposition of a civil penalty in an amount which may not exceed twenty-five thousand dollars (\$25,000) for any single violation or one hundred thousand dollars (\$100,000) for multiple violations in a single proceeding or a series of related proceedings;
- (ii) Disgorgement;
- (iii) Declaratory judgment;
- (iv) Restitution to depositors wishing restitution; and
- (v) Appointment of a receiver or conservator for the defendant or the defendant's assets.

(c) Appropriate remedies when the defendant is shown only about to violate the provisions of the Idaho bank act or a rule or order of the director shall be limited to:

- (i) A temporary restraining order;
- (ii) A temporary or permanent injunction;
- (iii) A writ of prohibition or mandamus; or
- (iv) An order appointing a receiver or conservator for the defendant or the defendant's assets.

(2) The court shall not require the director to post a bond in any action brought under this chapter. [I.C., § 26-1117, as added by 1995, ch. 99, § 8, p. 299.]

**Compiler's notes.** Section 9 of S.L. 1995, ch. 99 is compiled as § 26-1601.

## CHAPTER 12

### CIVIL AND CRIMINAL PENALTIES

#### SECTION.

- 26-1201. Unauthorized banking.
- 26-1202. Advertising by unauthorized bank.
- 26-1202A. [Repealed.]
- 26-1203. False statements regarding banks and trust companies — Penalty.
- 26-1204. False statements regarding banks and trust companies — Civil remedies.
- 26-1206. Penalty for unlawful hypothecation of assets.
- 26-1207. Concealment of loans and discounts.
- 26-1208. False reports or entries.
- 26-1209. [Repealed.]

#### SECTION.

- 26-1210. Bank officers and directors to report felonies.
- 26-1211. Misleading advertising.
- 26-1212. Loans to officials of department prohibited.
- 26-1213. Commission for making loans.
- 26-1214. Overdrafts.
- 26-1215. Penalty for officer overdrawing account.
- 26-1216. Carrying as asset property not actually owned.
- 26-1217. Penalty for neglect to open.
- 26-1218. Notes for stock subscription illegal.
- 26-1219. Advertising branches.
- 26-1220. Illegal data processing activities.

**26-1201. Unauthorized banking.** — It shall be unlawful for any person to engage in soliciting, receiving or accepting money or its equivalent on deposit as a regular business whether such deposit, however evidenced, is made subject to check or draft or other order unless such activity is specifically authorized by statute. Any person violating any provision of this



section shall be guilty of a felony. [I.C., § 26-1201, as added by 1979, ch. 41, § 2, p. 62.]

**Compiler's notes.** Former §§ 26-1201 — 26-1205 which comprised S.L. 1925, ch. 133, §§ 106, 110-112, p. 190; am. 1931, ch. 20, § 2, p. 48; I.C.A., §§ 25-1201 — 25-1204; I.C., § 26-1202A, as added by 1969, ch. 254, § 1, p.

786, were repealed by S.L. 1979, ch. 41, § 1.

**Cross ref.** Definitions, § 26-106.

**Sec. to sec. ref.** This chapter is referred to in § 26-1111.

**26-1202. Advertising by unauthorized bank.** — Any person, other than a national bank, not authorized to operate as a bank under this act, that uses or advertises as part of his or its firm or corporate name the word "bank," "banker," or any other word or words of similar import, or advertises that it will (be) provide services which constitute banking business is guilty of a felony. [I.C., § 26-1202, as added by 1979, ch. 41, § 2, p. 62.]

**Compiler's notes.** Former § 26-1202 was repealed. See Compiler's notes, § 26-1201.

The words "this act" refer to S.L. 1979, ch.

41 compiled herein as §§ 26-101 — 26-1319.

The word "be" was placed in parentheses by the compiler as surplusage.

## **26-1202A. Regulations of director of the department of finance. [Repealed.]**

**Compiler's notes.** This section which comprised 1925, ch. 133, § 113, p. 190; I.C.A.

§ 25-1205 was repealed by S.L. 1979, ch. 41, § 1.

**26-1203. False statements regarding banks and trust companies — Penalty.** — Any person who shall willfully and maliciously make, circulate or transmit to another or others any false statement, rumor, or suggestion, written, printed or by word of mouth, which is directly or by inference derogatory to the financial condition or affects the solvency or financial standing of any bank or trust company doing business in this state, or who shall counsel, aid, procure or induce another to start, transmit or circulate any such statement or rumor, shall be guilty of a felony. [I.C., § 26-1203, as added by 1979, ch. 41, § 2, p. 62; am. 2000, ch. 288, § 3, p. 970.]

**Compiler's notes.** Former § 26-1203 was repealed. See Compiler's notes, § 26-1201.

Section 2 of S.L. 2000, ch. 288, is compiled as § 26-1111.

**Sec. to sec. ref.** This section is referred to in § 26-107.

**26-1204. False statements regarding banks and trust companies — Civil remedies.** — (1) It is unlawful for any person to make, circulate or transmit to another or others any false statement, rumor, or suggestion, written, printed or by word of mouth, which is directly or by inference derogatory to the financial condition or affects the solvency or financial standing of any bank or trust company doing business in this state, or who shall counsel, aid, procure or induce another to start, transmit or circulate any such statement or rumor.

(2) Whenever it appears to the director that any person has engaged in any act constituting a violation of this section, he may in his discretion bring

an action in any court of competent jurisdiction to enjoin any such act and to enforce compliance with this section. Upon a showing that a person has engaged or is about to engage in an act constituting a violation of this section, a permanent or temporary injunction, restraining order or writ of mandamus shall be granted. The director shall not be required to furnish a bond. In addition to the foregoing, the director may be granted the following remedies:

- (a) An order that the person violating this section pay a civil penalty to the general fund in an amount not to exceed ten thousand dollars (\$10,000) for each violation;
- (b) An order that the person violating this section pay costs to the department, which may include an amount representing reasonable attorney's fees and reimbursements for investigative efforts;
- (c) An order granting other appropriate remedies upon a proper showing. [I.C., § 26-1204, as added by 2000, ch. 288, § 4, p. 970.]

**Compiler's notes.** The following sections were repealed by S.L. 1993, ch. 85, § 1, effective July 1, 1993:

Former § 26-1204, which comprised I.C., § 26-1204, as added by 1979, ch. 41, § 2, p. 62.

Former § 26-1205, which comprised I.C., § 26-1205, as added by 1979, ch. 41, § 2, p. 62.

Additional versions of former §§ 26-1204 and 26-1205 were previously repealed. See Compiler's notes, § 26-1201.

**26-1206. Penalty for unlawful hypothecation of assets.** — Any officer or employee of any bank or the bank holding company owning or controlling the bank, doing business in this state who, except in the manner authorized by law or the contract of the parties, hypothecates, pledges or in any way alienates any notes, stocks, bonds, mortgages, securities or any other property coming into his hands or into the possession of said bank as collateral, for safekeeping or in any other manner, and to which the bank has not acquired full title, shall be guilty of theft, and upon conviction thereof shall be punished as provided in section 18-2408, Idaho Code. [I.C., § 26-1206, as added by 1979, ch. 41, § 2, p. 62; am. 1998, ch. 337, § 3, p. 1082.]

**Compiler's notes.** Sections 2 and 4 of S.L. 1998, ch. 337 are compiled as §§ 26-204 and 26-2502, respectively.

**Sec. to sec. ref.** This section is referred to in § 26-107.

**26-1207. Concealment of loans and discounts.** — Any officer or employee of any bank or the bank holding company owning or controlling the bank who intentionally conceals from the director of the department of finance or the directors of the bank or a committee thereof, the purchase of any security, the sale of any of its securities, or any guaranty, repurchase agreement or any other agreement whereby the bank is obligated, shall be guilty of a felony. [I.C., § 26-1207, as added by 1979, ch. 41, § 2, p. 62.]

**Sec. to sec. ref.** This section is referred to in § 26-107.

**26-1208. False reports or entries.** — Any director, officer, or employee of any bank or bank holding company who shall willingly and knowingly subscribe to or make or cause to be made any false statement or false entry on the books or in any report or statement of the bank or bank holding company, or shall knowingly make or exhibit any false reports, entries or statements with the intent to deceive any person or persons authorized to examine into the affairs of the bank or bank holding company or the board of directors of the bank or bank holding company or shall knowingly state or publish any false report or statement of any bank or bank holding company, shall be guilty of a felony. [I.C., § 26-1208, as added by 1979, ch. 41, § 2, p. 62.]

**Sec. to sec. ref.** This section is referred to in § 26-107.

**26-1209. Embezzlement. [Repealed.]**

**Compiler's notes.** Former § 26-1209, 1979, ch. 41, § 2, p. 62, was repealed by S.L. which comprised I.C., § 26-1209, as added by 1993, ch. 85, § 1, effective July 1, 1993.

**26-1210. Bank officers and directors to report felonies.** — It shall be the duty of every officer or director of any bank to report promptly every violation or apparent violation of any of the banking laws of this state which is defined as a felony under the laws of this state, of which he has knowledge, to the director of the department of finance or his duly authorized agent or agents, immediately upon the discovery thereof. Every such person who intentionally withholds such a report, or fails to make a prompt report of any such violation with the intent to injure, deceive or defraud such bank or any of its depositors, creditors or stockholders, or the director of the department of finance or his duly authorized agent or agents shall be guilty of a misdemeanor. [I.C., § 26-1210, as added by 1979, ch. 41, § 2, p. 62.]

**26-1211. Misleading advertising.** — No bank or bank holding company or any officer thereof shall advertise in any manner which is misleading, false or deceptive. Any bank violating the provisions of this section shall be subject to the provisions of section 26-1115, Idaho Code. [I.C., § 26-1211, as added by 1979, ch. 41, § 2, p. 62.]

**26-1212. Loans to officials of department prohibited.** — It shall be unlawful for the department of finance, its director or employees engaged in bank examination or supervision, to borrow money directly or indirectly from any state bank, or director or official of a state bank. Any person violating the provision of this section shall be guilty of a felony. [I.C., § 26-1212, as added by 1979, ch. 41, § 2, p. 62; am. 1993, ch. 53, § 4, p. 137.]

**Compiler's notes.** Section 3 of S.L. 1993, ch. 53 is compiled as § 26-701.



**26-1213. Commission for making loans.** — No officer, director or employee of any bank or the bank holding company owning or controlling the bank shall demand, accept or receive, directly or indirectly, any commission or other consideration on account of the making, extension, or renewal by said bank of any loan, or extension of credit, to any person, firm or corporation. This prohibition shall not apply to consideration paid by a bank to its employees.

Any person violating the provisions of this section shall be guilty of a felony. [I.C., § 26-1213, as added by 1979, ch. 41, § 2, p. 62; am. 1993, ch. 53, § 5, p. 137.]

**26-1214. Overdrafts.** — Any officer or employee of any bank who shall pay out the funds of any bank upon the check, order or draft of any individual, firm, corporation or association, which has not on deposit with such bank a sum equal to such check, order or draft shall be personally liable to it for the amount so paid, unless the drawer of such check, order or draft has previously arranged with the board of directors for credit sufficient to cover such amount. Provided, that the board of directors may ratify such overdraft and relieve such liability.

Whenever the overdrafts of the depositors of any bank doing business under this chapter are, in the opinion or judgment of the director of the department of finance, excessive or of long standing, he may require such bank to either collect or materially reduce the same or secure notes in lieu (of) thereof. [I.C., § 26-1214, as added by 1979, ch. 41, § 2, p. 62.]

**Compiler's notes.** The word "of" in the second paragraph was placed in parentheses by the compiler as surplusage.

**26-1215. Penalty for officer overdrawing account.** — Any director, officer or employee of any bank or the bank holding company owning or controlling the bank who knowingly and consistently overdraws his or her account, or any officer or employee who allows such an overdraft shall be guilty of a misappropriation of the bank's funds and upon conviction thereof, shall be punished by a fine of not exceeding one thousand dollars (\$1,000) or by imprisonment in the county jail for not more than one (1) year, or both such fine and imprisonment, in the discretion of the court. [I.C., § 26-1215, as added by 1979, ch. 41, § 2, p. 62.]

**26-1216. Carrying as asset property not actually owned.** — It shall be unlawful for any bank or bank holding company to carry as an asset any note, obligation or security which is not the property of the bank or bank holding company; and any officer or employee of any such bank or bank holding company who places among the assets thereof any note, obligation or security which it does not actually own, or who represents to the director or any examiner appointed by him that any note, obligation or security carried among the assets of the bank or bank holding company is the property of said bank, when in fact such note, obligation or security is not

owned by said bank or banking holding company shall be guilty of a misdemeanor. [I.C., § 26-1216, as added by 1979, ch. 41, § 2, p. 62.]

**26-1217. Penalty for neglect to open.** — Any bank which fails to open for business within one (1) year after the date from which its charter was issued shall, unless the time is extended by the director of the department of finance, be deemed to have forfeited the charter and its right and authority to do business and to have no further legal existence, and in case the director of the department of finance approves the establishment of any branch of a bank as required by section 26-301, Idaho Code, and such branch or branch office is not established and operating within twelve (12) months after the date the charter is issued, unless the time be extended by the director for good cause shown, such approval shall be of no further force or effect and such branch or branch office shall not be established or operated until the approval of the director is again obtained as required by the statute last mentioned. The director may not extend the time for the establishment and commencement of operations of any such bank or branch office for a longer period than an additional six (6) months. [I.C., § 26-1217, as added by 1979, ch. 41, § 2, p. 62.]

**26-1218. Notes for stock subscription illegal.** — It shall be unlawful for the officers or directors of the banking corporation to accept the note of any subscriber or stockholder in payment or part payment of the par value of the common stock, surplus or undivided profits. [I.C., § 26-1218, as added by 1979, ch. 41, § 2, p. 62.]

**26-1219. Advertising branches.** — It shall be unlawful for any bank to advertise that a branch office will be established or available for bank customers until a branch charter has been issued by the director for that branch office under the provisions of chapter 3, title 26, Idaho Code. It shall be unlawful for any person or group of persons to advertise that a unit bank will be established until approval for a bank charter has been issued by the director under the provisions of chapter 2, title 26, Idaho Code. A bank or person found guilty of a violation of the provisions of this section shall be fined not more than five thousand dollars (\$5,000). [I.C., § 26-1219, as added by 1979, ch. 41, § 2, p. 62.]

**26-1220. Illegal data processing activities.** — It shall be unlawful for any person to introduce fraudulent records or data into the computer system of a bank or to use the computer related facilities of a bank without the proper authorization, or to alter or destroy information or files in a bank's computer system or to obtain without proper authorization, by electronic or other means, money, financial instruments, property, services or valuable data stored in a bank's computer system. Any person violating the provisions of this section shall be guilty of a felony. [I.C., § 26-1220, as added by 1979, ch. 41, § 2, p. 62.]



## CHAPTER 13

## TRUST COMPANIES AND TRUST DEPARTMENTS

## SECTION.

26-1301 — 26-1319. [Repealed.]

### 26-1301 — 26-1319. Trust Companies and Trust Departments. [Repealed.]

**Compiler's notes.** The following sections were repealed by S.L. 2000, ch. 288, § 5, effective July 1, 2000.

Section 26-1301, which comprised I.C., § 26-1301, as added by 1979, ch. 41, § 2, p. 62, was repealed by S.L. 2000, ch. 288, § 5, effective July 1, 2000.

Section 26-1302, which comprised I.C., § 26-1302, as added by 1979, ch. 41, § 2, p. 62; am. 1987, ch. 305, § 1, p. 645, was repealed by S.L. 2000, ch. 288, § 5, effective July 1, 2000.

Section 26-1303, which comprised I.C., § 26-1303, as added by 1979, ch. 41, § 2, p. 62, was repealed by S.L. 2000, ch. 288, § 5, effective July 1, 2000.

Section 26-1304, which comprised I.C., § 26-1304, as added by 1979, ch. 41, § 2, p. 62, was repealed by S.L. 2000, ch. 288, § 5, effective July 1, 2000.

Section 26-1305, which comprised I.C., § 26-1305, as added by 1979, ch. 41, § 2, p. 62, was repealed by S.L. 2000, ch. 288, § 5, effective July 1, 2000.

Section 26-1306, which comprised I.C., § 26-1306, as added by 1979, ch. 41, § 2, p. 62, was repealed by S.L. 2000, ch. 288, § 5, effective July 1, 2000.

Section 26-1307, which comprised I.C., § 26-1307, as added by 1979, ch. 41, § 2, p. 62, was repealed by S.L. 2000, ch. 288, § 5, effective July 1, 2000.

Section 26-1308, which comprised I.C., § 26-1308, as added by 1979, ch. 41, § 2, p. 62, was repealed by S.L. 2000, ch. 288, § 5, effective July 1, 2000.

Section 26-1309, which comprised I.C., § 26-1309, as added by 1979, ch. 41, § 2, p. 62, was repealed by S.L. 2000, ch. 288, § 5, effective July 1, 2000.

Section 26-1310, which comprised I.C., § 26-1310, as added by 1979, ch. 41, § 2, p. 62, was repealed by S.L. 2000, ch. 288, § 5, effective July 1, 2000.

Section 26-1311, which comprised I.C., § 26-1311, as added by 1979, ch. 41, § 2, p. 62, was repealed by S.L. 2000, ch. 288, § 5, effective July 1, 2000.

Section 26-1312, which comprised I.C., § 26-1312, as added by 1979, ch. 41, § 2, p. 62, was repealed by S.L. 2000, ch. 288, § 5, effective July 1, 2000.

Section 26-1313, which comprised I.C., § 26-1313, as added by 1979, ch. 41, § 2, p. 62, was repealed by S.L. 2000, ch. 288, § 5, effective July 1, 2000.

Section 26-1314, which comprised I.C., § 26-1314, as added by 1979, ch. 41, § 2, p. 62, was repealed by S.L. 2000, ch. 288, § 5, effective July 1, 2000.

Section 26-1315, which comprised I.C., § 26-1315, as added by 1979, ch. 41, § 2, p. 62, was repealed by S.L. 2000, ch. 288, § 5, effective July 1, 2000.

Section 26-1316, which comprised I.C., § 26-1316, as added by 1979, ch. 41, § 2, p. 62, was repealed by S.L. 2000, ch. 288, § 5, effective July 1, 2000.

Section 26-1317, which comprised I.C., § 26-1317, as added by 1979, ch. 41, § 2, p. 62, was repealed by S.L. 2000, ch. 288, § 5, effective July 1, 2000.

Section 26-1318, which comprised I.C., § 26-1318, as added by 1979, ch. 41, § 2, p. 62, was repealed by S.L. 2000, ch. 288, § 5, effective July 1, 2000.

Section 26-1319, which comprised I.C., § 26-1319, as added by 1979, ch. 41, § 2, p. 62, was repealed by S.L. 2000, ch. 288, § 5, effective July 1, 2000.

## CHAPTER 14

## AFFILIATED BANK COMPANY

## SECTION.

26-1401. Definitions.

26-1402. Transfer of fiduciary capacities to an affiliated bank or an affiliated trust company.

## SECTION.

26-1403. Transfers of fiduciary capacities not prohibited by section 68-107, Idaho Code.

26-1404. Compliance and approval with fi-



## SECTION.

financial institution acquisition  
act required.

## SECTION.

26-1405 — 26-1409. [Repealed.]

**26-1401. Definitions.** — In this chapter:

(1) “Affiliated bank,” with respect to a trust company or another bank, means any bank:

- (a) That owns, directly or indirectly, eighty percent (80%) or more of the voting stock of such trust company or other bank; or
- (b) Eighty percent (80%) or more of the voting stock of which is owned, directly or indirectly, by the same bank holding company that owns, directly or indirectly, eighty percent (80%) or more of the voting stock of such trust company or other bank.

(2) “Affiliated trust company” means a trust company with a principal place of business located within the state of Idaho, and eighty percent (80%) or more of the voting stock of which is owned, directly or indirectly, by the same bank or bank holding company that owns, directly or indirectly, eighty percent (80%) or more of the voting stock of a trust company or a bank with respect to which the affiliated trust company is participating in a transfer of fiduciary capacities as provided in this chapter.

(3) “Bank” means any state bank or national bank whose operations are principally conducted in this state and which is authorized to engage in trust business.

(4) “Bank holding company” means a bank holding company as defined in the United States bank holding company act of 1956, as amended.

(5) “Director” means the director of the department of finance.

(6) “Fiduciary account,” with respect to an affiliated bank, affiliated trust company, or trust company, means an estate, trust, or other fiduciary relationship, and includes all rights, privileges, duties, obligations, and undertakings thereof, that have been established or provided for by a written instrument or in any other lawful manner with such affiliated bank, affiliated trust company or trust company.

(7) “Fiduciary capacity” means a capacity resulting from the undertaking to act alone or jointly with others as a personal representative of a decedent’s estate, a guardian or conservator of an estate, a receiver, a trustee under appointment of any court or under authority of any law, or a trustee for any other purpose permitted by law.

(8) “Principal place of business,” with respect to any affiliated bank, affiliated trust company, or trust company means such entity’s principal place of business within the state of Idaho.

(9) “Trust company” means a corporation holding a charter to engage in the trust business in this state, issued pursuant to chapters 32 through 36, title 26, Idaho Code, with a principal place of business located within the state of Idaho. [I.C., § 26-1401, as added by 1991, ch. 215, § 2, p. 515; am. 1992, ch. 87, § 1, p. 271; am. 2000, ch. 288, § 6, p. 970.]

**Compiler’s notes.** Former §§ 26-1401 — 26-1404 which comprised S.L. 1935 (1st E.S.), ch. 9, §§ 1-4, p. 18, were repealed by S.L. 1979, ch. 41, § 1.

The United States Bank Holding Company Act of 1956 referred to in subsection (4) of this section is compiled as 12 U.S.C. § 1841 et seq. and 26 U.S.C. § 1101 et seq.

Section 1 of S.L. 1991, ch. 215 is compiled as § 68-107.

Section 7 of S.L. 2000, ch. 288 is compiled as § 26-1808.

**Sec. to sec. ref.** This chapter is referred to in § 68-107.

**26-1402. Transfer of fiduciary capacities to an affiliated bank or an affiliated trust company.** — (1) A bank or trust company may transfer some or all of its fiduciary capacities to an affiliated bank or an affiliated trust company. To accomplish such a transfer, the bank or trust company shall file a verified application in the district court of the county in which the bank's or trust company's principal place of business is located, requesting that every fiduciary capacity of the bank or trust company, except as may be expressly excluded in such application, be transferred to an affiliated bank or affiliated trust company specified in the application, and the specified affiliated bank or affiliated trust company shall join in such application. The application shall indicate the county in which the principal place of business of the affiliated bank or affiliated trust company joining in the application is located.

(2) When any application under subsection (1) of this section has been filed, the clerk of the court where the application is filed shall enter an order fixing a date and time (which date shall not be more than sixty (60) days from the date the application is filed) for a hearing on the application. The bank or trust company filing an application under subsection (1) of this section shall prepare a notice as provided in subsection (3) of this section, and shall cause a copy of such notice to be published at least once a week for three (3) successive weeks preceding the hearing date, the first such publication to be at least thirty (30) days preceding the hearing date. Proof of such publication shall be made by certified copy of the notice or by affidavit, and the same shall be filed with the district court wherein the application was filed. Such publication shall be in a newspaper of general circulation published in each county in which the principal place of business of the bank or trust company is located or, if in any case there is no such newspaper, then in a newspaper of general circulation published in a contiguous county. In addition, at least thirty (30) days preceding the hearing date, the bank or trust company shall cause a copy of such notice to be mailed by first class mail to all persons entitled to and then receiving trust accountings from the bank or trust company.

(3) The notice to be published and mailed with respect to each application shall state the time and place of the hearing on the application, the name of the bank or trust company that has filed the application, the name of the affiliated bank or affiliated trust company which has joined in the application, that a transfer is requested of fiduciary capacities to the affiliated bank or affiliated trust company specified in the application, and that any interested person may file with the clerk of the court, on or before the date of the hearing, a written objection to the transfer as provided in subsection (4) of this section.

(4) On or before the date and time of the hearing on the application, any interested person, who is authorized by a will or relevant trust instrument to prohibit, challenge, amend or revoke a transfer of a fiduciary capacity



otherwise allowed under this chapter and arising from a fiduciary account in which the person is interested, may file an objection to such transfer with the clerk of the court. Failure to file an objection on or before the date and time of the hearing on the application shall constitute a waiver by such interested person of the right to object under this subsection, and waiver of any power under a will or relevant trust instrument to prohibit, challenge, amend, or revoke with respect to any transfer of fiduciary capacity otherwise authorized under this chapter.

(5) At the hearing, upon finding that notice has been given as required in this section, and upon finding that the affiliated bank or affiliated trust company has been duly authorized by the director to commence the business for which it is organized, the district court shall enter an order transferring to the affiliated bank or affiliated trust company every fiduciary capacity of the bank or trust company, excepting as may be otherwise specified in the application and excepting fiduciary capacities with respect to which a proper objection has been filed pursuant to subsection (4) of this section. Upon entry of the order, the affiliated bank or affiliated trust company shall, without further act and by operation of law, be substituted in every such fiduciary capacity. The transfer may be made a matter of record in any county of this state by filing a certified copy of the order of transfer in the office of the clerk of any district court in this state or by filing a certified copy of such order in the office of the recorder of any county in this state, to be recorded and indexed by such officer in like manner and with like effect as other orders and decrees of courts are recorded and indexed. Any fiduciary capacities of the bank or trust company excepted from the order of transfer shall remain with such bank or trust company.

(6) Each designation of the bank or trust company as fiduciary in a will or other relevant trust instrument executed before or after the date the order of transfer is entered shall be deemed a designation of the affiliated bank or affiliated trust company substituted for such bank or trust company pursuant to this section, except when such will or other relevant trust instrument is executed after the order of transfer and expressly negates the application of the provisions of this section. Any grant in any such will or other relevant trust instrument of any discretionary power shall be deemed conferred upon the affiliated bank or affiliated trust company deemed designated as the fiduciary pursuant to an order of transfer under the provisions of this section.

(7) Each bank or trust company shall account jointly with the affiliated bank or affiliated trust company which has been substituted as fiduciary pursuant to this section for the accounting period during which the affiliated bank or affiliated trust company is initially so substituted. Upon a transfer of fiduciary capacities pursuant to the provisions of this section, each bank or trust company shall deliver to the affiliated bank or affiliated trust company all related fiduciary accounts and assets held by such bank or trust company (except assets held for accounts with respect to which there has been no transfer of fiduciary capacities pursuant to this section), and upon such transfer the affiliated bank or affiliated trust company shall, without the necessity of any instrument of transfer or conveyance, succeed to all



rights, privileges, duties, obligations and undertakings under any fiduciary capacity and fiduciary account transferred in the manner authorized in this chapter. [I.C., § 26-1402, as added by 1991, ch. 215, § 2, p. 515; am. 1992, ch. 87, § 2, p. 271.]

**Compiler's notes.** Former § 26-1402 was repealed. See Compiler's notes under § 26-1401.

Section 3 of S.L. 1992, ch. 87 declared an emergency. Approved March 26, 1992.

**26-1403. Transfers of fiduciary capacities not prohibited by section 68-107, Idaho Code.** — No transfer of fiduciary capacities pursuant to the provisions of this chapter shall be deemed to be a transfer or delegation prohibited by the provisions of section 68-107, Idaho Code. [I.C., § 26-1403, as added by 1991, ch. 215, § 2, p. 515.]

**Compiler's notes.** Former § 26-1403 was repealed. See Compiler's notes under § 26-1401.

**26-1404. Compliance and approval with financial institution acquisition act required.** — No out-of-state financial institution or out-of-state financial institution holding company shall be allowed to join in an application for transfer of fiduciary capacities pursuant to the provisions of this chapter unless such out-of-state financial institution or out-of-state financial institution holding company first complies in full with the provisions of chapter 26, title 26, Idaho Code, and obtains approval of the director as specified in chapter 26, title 26, Idaho Code. [I.C., § 26-1404, as added by 1991, ch. 215, § 2, p. 515.]

**Compiler's notes.** Former § 26-1404 was repealed. See Compiler's notes under § 26-1401.

Section 2 of S.L. 1991, ch. 215 declared an emergency. Approved April 2, 1991.

## **26-1405 — 26-1409. Federal Deposit Insurance. [Repealed.]**

**Compiler's notes.** These sections which comprised S.L. 1935 (1st E.S.), ch. 9, §§ 5-9,

p. 18, were repealed by S.L. 1979, ch. 41, § 1. For present law, see §§ 26-1011 — 26-1015.

## **CHAPTER 15**

### **MISCELLANEOUS PROVISIONS**

#### **SECTION.**

26-1501. Office location.

26-1502 — 26-1520. [Repealed.]

**26-1501. Office location.** — (a) Nothing in the laws of this state shall prohibit a bank from maintaining an authorized branch office, customer bank communication terminal or other authorized office at the same location as an authorized office of another bank or a savings and loan association, credit union or supervised lender authorized to do business under the Idaho uniform consumer credit code.

(b) Nothing in the laws of this state shall prohibit a savings and loan association from maintaining an authorized branch office or other authorized office at the same location as an authorized office of another savings and loan association or a bank, credit union or supervised lender licensed to do business under the Idaho uniform consumer credit code.

(c) Nothing in the laws of this state shall prohibit a credit union from maintaining an authorized branch office, customer credit union communication terminal or other authorized office at the same location as an authorized office of another credit union or a bank, savings and loan association or supervised lender licensed to do business under the Idaho uniform consumer credit code.

(d) Nothing in the laws of this state shall prohibit a supervised lender authorized to do business under the Idaho uniform consumer credit code from maintaining an authorized branch office, or other authorized office, at the same location as an authorized office of another supervised lender or a bank, savings and loan association or credit union. [I.C., § 26-1501, as added by 1979, ch. 224, § 1, p. 619.]

**Compiler's notes.** Former § 26-1501, which comprised 1931, ch. 60, § 1, p. 98; I.C.A., § 25-1301, was repealed by S.L. 1967, ch. 161, § 10-102, effective at midnight on December 31, 1967.

The Uniform Consumer Credit Code referred to in this section was repealed. For present law, see §§ 28-41-101 — 28-49-107.

## **26-1502 — 26-1520. Bank collection code. [Repealed.]**

**Compiler's notes.** These sections comprising S.L. 1931, ch. 60, §§ 2-17, p. 98; I.C.A., §§ 25-1302 — 25-1317; 1943, ch. 94, § 1, p. 189; 1949, ch. 35, §§ 1-3, p. 58, were repealed

by S.L. 1967, ch. 161, § 10-102, effective at midnight on December 31, 1967. For present law see § 28-4-101 et seq.

## **CHAPTER 16**

### **IDAHO INTERSTATE BRANCHING ACT**

#### **SECTION.**

26-1601. Short title.

26-1602. Statement of purpose.

26-1603. Definitions.

#### **SECTION.**

26-1604. Merger approval.

26-1605. Conditions.

26-1606. Deposit concentrations.

**26-1601. Short title.** — This chapter shall be known, and may be cited as the "Idaho Interstate Branching Act." [I.C., § 26-1601, as added by 1995, ch. 99, § 9, p. 299.]

**Compiler's notes.** Former §§ 26-1601 — 26-1608 which comprised S.L. 1925, ch. 230, §§ 1-7, p. 446; am. 1929, ch. 54, §§ 1,2, p. 73; I.C.A., §§ 25-1401 — 25-1408; am. 1951, ch. 139, § 6, p. 324 were repealed by S.L. 1979, ch. 41, § 1.

Section 8 of S.L. 1995, ch. 99 is compiled as § 26-1117.

**Sec. to sec. ref.** This chapter is referred to in §§ 26-1104, 26-3204.

This chapter is referred to in § 26-3204.

**26-1602. Statement of purpose.** — It is the policy of the state of Idaho to allow out-of-state banks, chartered either by other states or by the federal government, by merger with an existing Idaho bank, to branch within the state of Idaho on the terms and conditions set out in this chapter and chapter 3, title 26, Idaho Code; further, it is the policy of the state of Idaho to allow banks chartered by or located in this state to establish, operate, and maintain branches in other states in any manner authorized by the law of such other states. It is an express purpose of this chapter to authorize mergers between banks in Idaho and banks located in other states as contemplated by section 44(a)(3)(A) of the federal deposit insurance act, as amended in 1994. [I.C., § 26-1602, as added by 1995, ch. 99, § 9, p. 299.]

**Compiler's notes.** Former § 26-1602 was repealed. See Compiler's notes, § 26-1601.

**26-1603. Definitions.** — As used in this chapter, and unless the context otherwise requires:

(1) "Home state" means:

(a) With respect to a state chartered bank, the state from which the bank received the charter under which it operates;

(b) With respect to a national bank, the state in which the main office of the national bank is located.

(2) "Host state" means, with respect to any bank, a state other than the home state of the bank in which the bank maintains, or seeks to establish and maintain a branch. [I.C., § 26-1603, as added by 1995, ch. 99, § 9, p. 299.]

**Compiler's notes.** Former § 26-1603 was repealed. See Compiler's notes, § 26-1601.

**Sec. to sec. ref.** This section is referred to in § 26-311.

**26-1604. Merger approval.** — (1) A bank whose home state is a state other than Idaho may acquire control of, acquire all or substantially all of the assets of, or merge with a bank whose home state is Idaho. Except as authorized in this chapter or section 26-311, Idaho Code, no bank, the home state of which is a state other than Idaho, may establish or maintain an office in this state, or conduct the business of banking in this state.

(2) A bank whose home state is Idaho may not enter into any transaction the result of which would be the acquisition of a branch or branches of the bank with an out-of-state bank without the acquisition of all or substantially all of the assets of the preexisting Idaho bank; provided that, in the event that a bank is required by the federal government to divest one (1) or more branches in connection with an interstate transaction, such branches may be sold to financial institutions located in Idaho subject to the approval of the director.

(3) A bank whose home state is Idaho may acquire control of, acquire all or substantially all of the assets of, or merge with a bank whose home state is a state other than Idaho. A bank with a home state other than Idaho shall apply to and receive the approval of the director prior to any acquisition



transaction which, if approved, would result in a bank, the home state of which is Idaho, becoming a branch or branches of the out-of-state bank. The director may accept copies of applications for such transactions made to other state or federal bank supervisory agencies. Without the prior approval of the director pursuant to this chapter, any merger transaction between a bank chartered by or located in this state and any out-of-state bank is unlawful.

(4) Banks chartered by this state and national banks, the main offices of which are located in this state, may establish or maintain branch banks in other states only in accordance with this chapter.

(5) A bank, the home state of which is Idaho, shall apply to and receive the approval of the director prior to any merger transaction which, if approved, would result in one (1) or more banks chartered by or located in one (1) or more other states becoming branches of a bank whose home state is Idaho. [I.C., § 26-1604, as added by 1995, ch. 99, § 9, p. 299; am. 1997, ch. 225, § 4, p. 661.]

**Compiler's notes.** Former § 26-1604 was repealed. See Compiler's notes, § 26-1601.

Section 3 of S.L. 1997, ch. 225 is compiled as § 26-1104.

**26-1605. Conditions.** — (1) The director shall not approve the acquisition of a bank, the home state of which is Idaho, if:

(a) The bank to be acquired has been in existence and engaged in the business of banking in this state for less than five (5) years;

(b) The statutes of the home state of the acquiring bank would not expressly allow a bank chartered in this state to acquire a bank in such state.

(2) Upon notification by a bank, the home state of which is Idaho, that such bank intends to operate a branch in another state, the department will have thirty (30) days within which to object or otherwise act upon such an acquisition.

(3) If the director finds a violation of Idaho law concerning the activities of a bank which has Idaho as a host state, or that such a bank is operating in an unsafe and unsound condition, the director may take any enforcement or corrective action authorized under the Idaho bank act. The director may limit the authority of any bank operating in Idaho to accept or retain deposits originating in Idaho if the bank is operating in an unsafe or unsound manner. [I.C., § 26-1605, as added by 1995, ch. 99, § 9, p. 299.]

**Compiler's notes.** Former § 26-1605 was repealed. See Compiler's notes, § 26-1601.

**26-1606. Deposit concentrations.** — (1) There shall be under the Idaho bank act, including this chapter and chapter 26, title 26, Idaho Code, no deposit cap or concentration limit in Idaho.

(2) The director may, by order, waive any federal deposit concentration limit that has the effect of being more limiting than subsection (1) of this section. In determining to waive the federal concentration limit, the director

shall apply a standard that does not discriminate against out-of-state banks, out-of-state bank holding companies, or subsidiaries thereof, upon a finding that the waiver promotes:

- (a) Availability of financial services;
- (b) The marketability of Idaho banks; or
- (c) Other public interest.

(3) This section is not intended to affect the applicability, if any, of federal or state antitrust laws. [I.C., § 26-1606, as added by 1995, ch. 99, § 9, p. 299.]

**Compiler's notes.** Former § 26-1606 was repealed. See Compiler's notes, § 26-1601.

Section 10 of S.L. 1995, ch. 99 is compiled as §§ 26-1701 — 26-1716.

CHAPTER 17

IDAHO INTERNATIONAL BANKING ACT

SECTION.	SECTION.
26-1701. Title and scope.	licenses — Permissible activities.
26-1702. Definitions.	
26-1703. Authority for operation of international banking offices.	26-1710. Securities, bonds and other commercial paper to be held in this state.
26-1704. Application of this chapter.	26-1711. Financial certification — Restrictions on investments, loans and acceptances.
26-1705. Application of the Idaho business corporation act.	26-1712. Reports.
26-1706. Requirements for carrying on banking business.	26-1713. Dissolution.
26-1707. Actions against international banking corporations.	26-1714. International representative offices.
26-1708. Application for license.	26-1715. Rules.
26-1709. Effect, renewal, and revocation of	26-1716. Cease and desist.

**26-1701. Title and scope.** — (1) This chapter shall be known, and may be cited as the “Idaho International Banking Act.”

(2) This chapter is intended to set forth the terms and conditions under which an international banking corporation may enter and do business in Idaho. [I.C., § 26-1701, as added by 1995, ch. 99, § 10, p. 299.]

**Compiler's notes.** Former § 26-1701, which comprised S.L. 1927, ch. 41, § 1, p. 54; I.C.A., § 25-1501, was repealed by S.L. 1979, ch. 41, § 1.

Section 9 of S.L. 1995, ch. 99 is compiled as §§ 26-1601 — 26-1606.

**26-1702. Definitions.** — (1) As used in this chapter, unless the context otherwise requires:

- (a) “Director” means the director of the department of finance.
- (b) “Federal international bank institutions” means a branch, agency, or representative office of an international banking corporation established and operating under the federal international banking act of 1978, 12 U.S.C. sec. 3101 et seq., as amended, and its regulations.
- (c) “Foreign country” means a country other than the United States, but including a territory or possession of the United States.
- (d) “International bank agency” means a business or any part of a banking business conducted in this state or through an office located in

this state, other than a federal international bank institution, which exercises powers as set forth in section 26-1709, Idaho Code, on behalf of an international banking corporation.

(e) "International bank branch" means a business or any part of a banking business conducted in this state, or through an office located in this state, other than a federal international bank institution, which exercises powers as set forth in section 26-1709, Idaho Code, on behalf of an international banking corporation.

(f) "International banking corporation" means a banking corporation organized and licensed under the laws of a foreign country or a political subdivision of a foreign country.

(g) "International representative office" means a business location of a representative of an international banking corporation other than a federal international bank institution, established to act in a liaison capacity with existing and potential customers of the international banking corporation and to generate new loans and other activities for the international banking corporation that is operating outside the state.

(2) Legal and financial terms used in this chapter refer to equivalent terms used by the country in which the international banking corporation is organized. [I.C., § 26-1702, as added by 1995, ch. 99, § 10, p. 299.]

**Compiler's notes.** Former § 26-1702, ch. 20, § 1; I.C.A., § 25-1502, was repealed by which comprised Acts 1927, ch. 41, § 2; 1929, Acts 1949, ch. 36, § 7.

### **26-1703. Authority for operation of international banking offices.**

— (1) An international banking corporation with a home state other than Idaho may establish and operate, directly or indirectly, a federal international bank institution in this state in accordance with applicable federal law.

(2) An international banking corporation with no home state may establish and operate, directly or indirectly, a federal international bank institution in this state in accordance with applicable federal law.

(3) An international banking corporation with a home state other than Idaho may establish and operate, directly or indirectly, an international bank branch, an international bank agency, or an international representative office in accordance with this chapter and applicable federal law.

(4) An international banking corporation with no home state may establish and operate, directly or indirectly, an international bank branch, an international bank agency, or an international representative office in accordance with this chapter and applicable federal law.

(5) For the purposes of this section, the home state of an international banking corporation that has branches, agencies, subsidiary commercial lending companies, or subsidiary banks, or any combination of branches, agencies, subsidiary commercial lending companies, or subsidiary banks in more than one (1) state is whichever of the states is so elected by the international banking corporation. If the international banking corporation does not elect a home state, the board of governors of the federal reserve system or the director, as applicable, shall elect the home state. [I.C., § 26-1703, as added by 1995, ch. 99, § 10, p. 299.]



**Compiler's notes.** Former §§ 26-1703 — § 1, p. 60; am. 1955, ch. 199, § 1, p. 428; am. 26-1705 which comprised S.L. 1927, ch. 41, 1967, ch. 16, § 1, p. 32 were repealed by S.L. §§ 3, 4, p. 54; I.C.A., §§ 25-1503, 25-1504; 1979, ch. 41, § 1. I.C.A., § 25-1505 as added by 1939, ch. 30,

**26-1704. Application of this chapter.** — International banking corporations, other than federal international bank institutions, are subject to this chapter, except where it appears, from the context or otherwise, that a provision is clearly applicable only to banks or trust companies organized under the laws of this state or the United States. An international banking corporation has no greater right under, or by virtue of, this chapter than is granted to banks organized under the laws of this state. [I.C., § 26-1704, as added by 1995, ch. 99, § 10, p. 299.]

**Compiler's notes.** Former § 26-1704 was repealed. See Compiler's notes, § 26-1703.

**26-1705. Application of the Idaho business corporation act.** — Where not inconsistent with this chapter and the Idaho bank act, the provisions of the Idaho business corporation act shall apply to international banking corporations doing business in this state. [I.C., § 26-1705, as added by 1995, ch. 99, § 10, p. 299.]

**Compiler's notes.** Former § 26-1705 was repealed. See Compiler's notes, § 26-1703.

**26-1706. Requirements for carrying on banking business.** — (1) No international banking corporation, other than a federal international bank corporation, shall transact a banking business or maintain in this state any office for carrying on a banking business or any part of a banking business unless the corporation:

- (a) Is authorized by its articles to carry on a banking business and has complied with the laws of the country under which it is chartered;
- (b) Has furnished to the director any proof as to the nature and character of its business and as to its financial condition as the director may require;
- (c) Has filed with the director:

- (i) A duly executed instrument in writing, by its terms of indefinite duration and irrevocable, appointing the director its true and lawful attorney upon whom all process in any action against it may be served with the same force and effect as if it were a domestic corporation and has been lawfully served with process within the state;

- (ii) A written certificate of designation, which may be changed from time to time thereafter by the filing of a new certificate of designation, specifying the name and address of the officer, agent, or other person to whom the director shall forward the process; and

- (iii) A certified copy of any filings required to be made by foreign corporations to the secretary of state by the Idaho business corporation act.

- (d) Has paid to the director a fee set by the director to defray the cost of investigation and supervision.

- (e) Has received a license duly issued to it by the director.

(2) The director shall not issue a license to an international banking corporation unless it is chartered in a foreign country that permits banks chartered by the United States or any of its states to establish similar facilities in that country. [I.C., § 26-1706, as added by 1995, ch. 99, § 10, p. 299.]

**26-1707. Actions against international banking corporations. —**

(1) A “resident of this state” may maintain an action against an international banking corporation doing business in this state for any cause of action. For purposes of this subsection, the term resident of this state includes any individual domiciled in this state, or any corporation, partnership, or trust formed under the laws of this state.

(2) An international banking corporation or a nonresident of this state may maintain an action against an international banking corporation doing business in this state in the following cases only:

(a) Where the action is brought to recover damages for the breach of a contract made or to be performed within this state or relating to property situated within this state at the time of the making of the contract;

(b) Where the subject matter of the litigation is situated within this state;

(c) Where the cause of action arose within this state, except where the object of the action is to affect the title of real property situated outside this state; or

(d) Where the action is based on a liability for acts done within this state by an international banking corporation or its international bank agency, international bank branch, or international representative office.

(3) The limitations contained in subsection (2) of this section, do not apply to a corporation formed and existing under the laws of the United States and that maintains an office in this state. [I.C., § 26-1707, as added by 1995, ch. 99, § 10, p. 299.]

**26-1708. Application for license. —** (1) Every international banking corporation, before being licensed by the director to transact a banking business in this state as an international bank branch or as an international bank agency or before maintaining in this state any office to carry on a banking business or any part of a banking business, shall subscribe and acknowledge and submit to the director, at the director’s office, a separate application, in duplicate, which shall state:

(a) The name of the international banking corporation;

(b) The location by street and post office address and county where its business is to be transacted in this state and the name of the person who is in charge of the business and affairs of the office;

(c) The location where its initial registered office will be located in this state;

(d) The amount of its capital actually paid in and the amount subscribed for and unpaid; and

(e) The actual value of the assets of the international banking corporation, which must be at least fifty million dollars (\$50,000,000) in excess of its liabilities, and a complete and detailed statement of its financial



condition as of a date within sixty (60) days before the date of the application; except that the director may, when necessary or expedient, accept the statement of financial condition as of a date within one hundred twenty (120) days before the date of the application.

(2) When the application is submitted to the director, the international banking corporation shall also submit a duly authenticated copy of its article of incorporation, or equivalent corporate document, and an authenticated copy of its bylaws, or an equivalent of the bylaws that is satisfactory to the director, and pay an investigation and supervision fee to be established by rule or order. The international banking corporation shall also submit to the director a certificate issued by the banking or supervisory authority of the country in which the international banking corporation is organized and licensed stating that the international banking corporation is duly organized and licensed and lawfully existing in good standing, and is empowered to conduct a general banking business.

(3) The director may approve or disapprove the application, but the director shall not approve the application unless, in the director's opinion, the applicant meets every requirement of this chapter and any other applicable provision of this chapter and any rules adopted under this chapter. The director may specify any conditions as the director deems appropriate, considering the public interest, the need to maintain a sound and competitive banking system, and the preservation of an environment conducive to the conduct of an international banking business in this state.

(4) An international banking corporation may operate more than one (1) international bank branch in this state, each at a different place of business, provided each branch office is separately licensed to transact a banking business or any part of a banking business under this chapter. An international banking corporation may operate more than one (1) international bank agency in this state, each at a different place of business, provided each agency office is separately licensed to transact a banking business or any part of a banking business under this chapter.

(5) Notwithstanding subsection (4) of this section, no international banking corporation licensed to maintain one (1) or more international bank branches in this state shall be licensed to maintain an international bank agency in this state except upon termination of the operation of its international bank branches under section 26-1713(2), Idaho Code and no international banking corporation licensed to maintain one (1) or more international bank agencies in this state shall be licensed to maintain an international bank branch in this state except upon the termination of the operation of its international bank agencies under section 26-1713(2), Idaho Code. [I.C., § 26-1708, as added by 1995, ch. 99, § 10, p. 299.]

**Sec. to sec. ref.** This section is referred to in § 26-1714.

**26-1709. Effect, renewal, and revocation of licenses — Permissible activities.** — (1) When the director has issued a license to an international banking corporation, it may engage in the business authorized in this act at, and only at, the office specified in the license for a period not



exceeding one (1) year from the date of the license or until the license is surrendered or revoked. No license is transferable or assignable. Every license shall be, at all times, conspicuously displayed in the place of business specified in the license.

(2) The international banking corporation may renew the license annually upon application to the director upon forms to be supplied by the director for that purpose. The application for renewal shall be submitted to the director no later than sixty (60) days before the expiration of the license. The license may be renewed by the director upon a determination, with or without examination, that the international banking corporation is in a safe and satisfactory condition, that it has complied with applicable requirements of law, and that the renewal of the license is proper and has been duly authorized by proper corporate action. Each application for renewal of an international banking corporation license shall be accompanied by an annual renewal fee to be determined by the director by rule.

(3) The director may revoke the license, with or without examination, upon a determination that the international banking corporation does not meet the criteria established by subsection (2) of this section for renewal of licenses.

(4) If the director refuses to renew the license and, as a result, the license is revoked, all the rights and privileges of the international banking corporation to transact the business for which it was licensed shall immediately cease, and the license shall be surrendered to the director within twenty-four (24) hours after written notice of the decision has been mailed by the director to the registered office of the international banking corporation set forth in its application, as amended, or has been personally delivered to any officer, director, employee, or agent of the international banking corporation who is physically present in this state.

(5) An international banking corporation licensed under this act to carry on business in this state as an international bank agency may conduct a general banking business through its international bank agency in the same manner as banks existing under the laws of this state, except that no international banking corporation shall, through its bank agency, exercise fiduciary powers or receive deposits, but may maintain for the account of others credit balances incidental to or arising out of the exercise of its lawful powers. [I.C., § 26-1709, as added by 1995, ch. 99, § 10, p. 299.]

**Sec. to sec. ref.** This section is referred to in § 26-1702, 26-1713.

**26-1710. Securities, bonds and other commercial paper to be held in this state.** — (1) An international banking corporation licensed under this chapter shall hold, at its office in this state, currency, bonds, notes, debentures, drafts, bills of exchange, or other evidence of indebtedness or other obligations payable in the United States or in United States funds or, with the prior approval of the director, in funds freely convertible into United States funds in an amount that is not less than one hundred eight percent (108%) of the aggregate amount of liabilities of the international banking corporation payable at or through its office in this state or as

a result of the operations of the international bank branch or international bank agency, including acceptances, but excluding:

(a) Accrued expenses; and

(b) Amounts due and other liabilities to other offices, agencies, or branches of and wholly owned, except for a nominal number of directors' shares, and subsidiaries of the international banking corporation.

(2) For the purpose of this chapter, the director shall value marketable securities at principal amount or market value, whichever is lower, and may determine the value of any nonmarketable bond, note, debenture, draft, bill of exchange, or other evidence of indebtedness or of any other obligation held by or owed to the international banking corporation in this state. In determining the amount of assets for the purpose of computing the above ratio of assets, the director may exclude any particular assets, but may give credit, subject to any rules adopted by the director, to deposits and credit balances with unaffiliated banking institutions outside this state if the deposits or credit balances are payable in United States funds or in currencies freely convertible into United States funds. In no case shall credit given for the deposits and credit balances exceed in aggregate amounts any percentage, but not less than eight percent (8%) as the director may from time to time prescribe, of the aggregate amount of liabilities of the international banking corporations.

(3) If, by reason of the existence or the potential occurrence of unusual or extraordinary circumstances, the director considers it necessary or desirable for the maintenance of a sound financial condition, for the protection of creditors and the public interest and to maintain public confidence in the business of the international bank agency of the international banking corporation, the director may reduce the credit to be given as provided in this section for deposits and credit balances with unaffiliated banking institutions outside this state and may require the assets to be held in this state under this chapter with any bank or trust company existing under the laws of this state that the international banking corporation designates and the director approves.

(4) An international bank branch and international bank agency shall file any reports with the director as the director may require in order to determine compliance by the international bank branch or international bank agency with this section. [I.C., § 26-1710, as added by 1995, ch. 99, § 10, p. 299.]

**26-1711. Financial certification — Restrictions on investments, loans and acceptances.** — (1) Before opening an office in this state, and annually thereafter so long as a bank office is maintained in this state, an international banking corporation licensed under this act shall certify to the director the amount of its paid-in capital, its surplus, and its undivided profits, each expressed in the currency of the country of its incorporation. The dollar equivalent of this amount, as determined by the director, is considered to be the amount of its capital, surplus, and undivided profits.

(2) Purchases and discounts of bills of exchange, bonds, debentures, and other obligations and extensions of credit and acceptances by an interna-



tional bank agency within this state are subject to the same limitations as to amount in relation to capital, surplus, and undivided profits as are applicable to banks organized under the laws of this state. With the prior approval of the director, the capital notes and capital debentures of the international banking corporation may be treated as capital in computing the limitations. [I.C., § 26-1711, as added by 1995, ch. 99, § 10, p. 299.]

**26-1712. Reports.** — An international banking corporation licensed under this act shall, at the times and in the form prescribed by the director, make written reports in the English language to the director, under the oath of one (1) of its officers, managers, or agents transacting business in this state, showing the amount of its assets and liabilities and containing any other matters required by the director. If an international banking corporation fails to make a report, as directed by the director, or if a report contains a false statement knowingly made, this is grounds for revocation of the license of the international banking corporation. [I.C., § 26-1712, as added by 1995, ch. 99, § 10, p. 299.]

**26-1713. Dissolution.** — (1) When an international banking corporation licensed to maintain an international bank branch or an international bank agency in this state is dissolved or its authority or existence is otherwise terminated or canceled in the jurisdiction of its incorporation, a certificate of the official responsible for records of banking corporations of the jurisdiction of incorporation of the international banking corporation attesting to the occurrence of this event or a certified copy of an order or decree of a court of the jurisdiction directing the dissolution of the international banking corporation or the termination of its existence or the cancellation of its authority shall be delivered to the director. The filing of the certificate, order, or decree has the same effect as the revocation of the international banking corporation's license as provided in section 26-1709(4), Idaho Code.

(2) An international banking corporation that proposes to terminate the operation in this state of an international bank branch, an international bank agency, or an international representative office shall comply with procedures as the director may prescribe by rule or order to insure an orderly cessation of business in a manner that is not harmful to the public interest and shall surrender its license to the director or shall surrender its right to maintain an office in this state, as applicable.

(3) The director shall continue as agent of the international banking corporation upon whom process against it may be served in any action based upon any liability or obligation incurred by the international banking corporation within this state before the filing of the certificate, order, or decree; and the director shall promptly cause a copy of the process to be mailed by registered or certified mail, return receipt requested, to the international banking corporation at the post office address specified for this purpose on file with the director's office. [I.C., § 26-1713, as added by 1995, ch. 99, § 10, p. 299.]



**Sec. to sec. ref.** This section is referred to in § 26-1708.

**26-1714. International representative offices.** — (1) An international banking corporation that does not transact a banking business or any part of a banking business in or through an office in this state, but maintains an office in this state for other purposes is considered to have an international representative office in this state.

(2) An international representative office located in this state shall register with the director annually on forms prescribed by the director. The registration shall be filed before January 31 of each year, shall be accompanied by a registration fee prescribed by rule or order, and shall list the name of the local representative, the street address of the office, and the nature of the business to be transacted in or through the office.

(3) The director may review the operations of an international representative office annually or at any greater frequency as is necessary to assure that the office does not transact a banking business.

(4) An international banking corporation desiring to convert its existing registered international representative office to a licensed international bank branch or licensed international bank agency shall submit to the director the application required in section 26-1708, Idaho Code, and is required to meet the minimum criteria for licensing of an international bank branch or licensed international bank agency under this chapter.

(5) An international representative office may act in a liaison capacity with existing and potential customers of an international banking corporation and in undertaking these activities may, through its employees or agents, without limitation, solicit loans, assemble credit information, make proprietary inspections and appraisals, complete loan applications and other preliminary paperwork in preparation for making a loan, but may not solicit or accept deposits. No international representative office shall conduct any banking business or part of a banking business in this state. [I.C., § 26-1714, as added by 1995, ch. 99, § 10, p. 299.]

**26-1715. Rules.** — The department of finance may promulgate administrative rules necessary to implement this chapter. [I.C., § 26-1715, as added by 1995, ch. 99, § 10, p. 299.]

**26-1716. Cease and desist.** — Upon a finding that any action of an international banking corporation or its international banking agency, international banking branch, or international representative office subject to this chapter may be in violation of any Idaho banking law, the director, pursuant to chapter 52, title 67, Idaho Code, and after a reasonable notice to the international banking corporation, international bank agency, international bank branch, or international representative office and an opportunity for it to be heard, may order it to cease and desist from the action. If the international banking corporation, international bank agency, international bank branch, or international representative office fails to appeal the decision in accordance with chapter 52, title 67, Idaho Code, and continues

to engage in the action in violation of the director's order to cease and desist the action, it is subject to a penalty of one thousand dollars (\$1,000) to be recovered with costs by the director in any court of competent jurisdiction in a civil action prosecuted by the director. This penalty is in addition to and not in lieu of any other law applicable to the failure of an international banking corporation, international bank agency, international bank branch, or international representative office to comply with an order of the director. [I.C., § 26-1716, as added by 1995, ch. 99, § 10, p. 299.]

**Compiler's notes.** Section 11 of S.L. 1995, ch. 99 amended the heading for Chapter 26, Title 26, Idaho Code.

## CHAPTER 18

### SAVINGS BANKS

#### SECTION.

- 26-1801. Short title.
- 26-1802. Purpose.
- 26-1803. Definitions.
- 26-1804. Idaho bank act and general business corporation laws.
- 26-1805. Prohibitions.
- 26-1806. Insurance required.
- 26-1807. Qualification as thrift institution.
- 26-1808. Trust powers.
- 26-1809. Powers.

#### SECTION.

- 26-1810. Demand deposits.
- 26-1811. Mutual savings banks — Ownership — Membership — Directors — Capital.
- 26-1812. Conversions.
- 26-1813. Mutual to stock conversions.
- 26-1814. Acquisitions.
- 26-1815. Foreign savings and loan associations.
- 26-1816 — 26-1856. [Repealed.]

**26-1801. Short title.** — This chapter shall be known as the "Idaho Savings Bank Act." [I.C., § 26-1801, as added by 1997, ch. 310, § 3, p. 917.]

**Compiler's notes.** Former § 26-1801 which comprised 1967, ch. 437, § 1, p. 1472 was repealed by S.L. 1997, ch. 310, § 1, effective July 1, 1997.

Section 2 of S.L. 1997, ch. 310 is compiled as § 26-101.

**Sec. to sec. ref.** This chapter is referred to in § 26-3204.

**26-1802. Purpose.** — The purpose of this act is to allow any federal savings bank, federal mutual savings bank or federal savings and loan association, located in Idaho to convert its charter to that of an Idaho bank, an Idaho stock savings bank or an Idaho mutual savings bank. Banks and credit unions chartered either under this title or federal law are also allowed to convert to savings banks as provided herein. Once converted, an Idaho stock savings bank or mutual savings bank shall operate and be supervised pursuant to this act. A savings bank operating under this act may convert to a federal charter as a federal savings bank or federal savings and loan association if authorized by federal law. A savings bank under this act may also convert to a bank charter or to a credit union charter. Wherever the term "savings and loan association" is used in the Idaho Code, it shall include savings banks chartered under this act or associations doing business in this state pursuant to section 26-1815, Idaho Code. [I.C., § 26-1802, as added by 1997, ch. 310, § 3, p. 917.]

**Compiler's notes.** Former § 26-1802 which comprised 1967, ch. 437, § 2, p. 1472; am. 1969, ch. 310, § 1, p. 956; am. 1979, ch. 288, § 1, p. 733 was repealed by S.L. 1997, ch. 310, § 1, effective July 1, 1997. The words "this act" refer to S.L. 1997, ch. 310, § 3 compiled as §§ 26-1801—26-1815.

**26-1803. Definitions.** — Unless the context requires otherwise, the terms below have the meaning assigned:

- (1) "Department" means the Idaho department of finance.
- (2) "Director" means the director of the Idaho department of finance.
- (3) "Mutual savings bank" means a savings bank owned by the members of the savings bank and operating under this act.
- (4) "Savings bank" means a bank converted and operating pursuant to this act whether in stock form or in mutual form.
- (5) "Stock savings bank" means a savings bank owned by holders of capital stock and operating under this act. [I.C., § 26-1803, as added by 1997, ch. 310, § 3, p. 917.]

**Compiler's notes.** Former § 26-1803 which comprised 1967, ch. 437, § 13, p. 1472; am. 1979, ch. 288, § 2, p. 733 was repealed by S.L. 1997, ch. 319, § 1, effective July 1, 1997. For words "this act" see Compiler's notes, § 26-1802.

**26-1804. Idaho bank act and general business corporation laws.**

— (1) Except as otherwise provided in this chapter, the Idaho bank act shall apply to all corporations converted and operating under this act.

(2) Except as otherwise provided herein or in the Idaho bank act, the general business corporation laws of this state shall apply to all savings banks converted and operating under this act. [I.C., § 26-1804, as added by 1997, ch. 310, § 3, p. 917.]

**Compiler's notes.** Former § 26-1804 which comprised 1967, ch. 437, § 4, p. 1472 was repealed by S.L. 1997, ch. 310, § 1, effective July 1, 1997. The Idaho Bank Act and the general business corporation law of Idaho referred to in this section are compiled as § 26-101 et seq. and § 30-1-101 et seq., respectively.

For words "this act" see Compiler's notes, § 26-1802.

**26-1805. Prohibitions.** — Unless chartered under this act or federal law, it shall be unlawful for any person in this state to use in connection with a business name the term "savings bank" or words of similar import that lead the public reasonably to believe that the business so conducted is that of a savings bank. [I.C., § 26-1805, as added by 1997, ch. 310, § 3, p. 917.]

**Compiler's notes.** Former § 26-1805 which comprised 1967, ch. 437, § 5, p. 1472 was repealed by S.L. 1997, ch. 310, § 1, effective July 1, 1997. For words "this act" see Compiler's notes, § 26-1802.

**26-1806. Insurance required.** — All savings banks shall obtain and maintain federal deposit insurance through an insurance corporation created by an act of Congress. [I.C., § 26-1806, as added by 1997, ch. 310, § 3, p. 917.]



**Compiler's notes.** Former § 26-1806 was repealed by S.L. 1997, ch. 310 § 1, effective July 1, 1997.  
which comprised 1967, ch. 437, § 6, p. 1472

**26-1807. Qualification as thrift institution.** — All savings banks shall qualify for and maintain the status of a thrift institution under the internal revenue code of 1986 and any amendments thereto. [I.C., § 26-1807, as added by 1997, ch. 310, § 3, p. 917.]

**Compiler's notes.** Former § 26-1807 The Internal Revenue Code of 1986 referred to in this section is compiled throughout title 26 of the United States Code.  
which comprised 1967, ch. 437, § 7, p. 1472  
was repealed by S.L. 1997, ch. 310, § 1,  
effective July 1, 1997.

**26-1808. Trust powers.** — Savings banks which have received a charter from the director authorizing the operation of a trust department may engage in the trust business in accordance with chapters 32 through 36, title 26, Idaho Code. [I.C., § 26-1808, as added by 1997, ch. 310, § 3, p. 917; am. 2000, ch. 288, § 7, p. 970.]

**Compiler's notes.** Former § 26-1808 Sections 6 and 8 of S.L. 2000, ch. 288, are  
which comprised 1967, ch. 437, § 8, p. 1472 compiled as §§ 26-1401 and 26-3201 through  
was repealed by S.L. 1997, ch. 310, § 1, 26-3208.  
effective July 1, 1997.

**26-1809. Powers.** — In addition to the powers granted to banks under provisions of the Idaho bank act, and specifically section 26-1101, Idaho Code, savings banks may exercise any power or engage in any activity authorized either for federal savings banks or savings and loan associations or state savings banks or savings and loan associations. [I.C., § 26-1809, as added by 1997, ch. 310, § 3, p. 917.]

**Compiler's notes.** Former § 26-1809 ch. 310, § 1, effective July 1, 1997.  
which comprised 1967, ch. 437, § 9, p. 1472; The Idaho Bank Act referred to in this  
am. 1969, ch. 310, § 2, p. 956; am. 1993, ch. section is compiled as 26-101 et seq.  
216, § 11, p. 587 was repealed by S.L. 1997,

**26-1810. Demand deposits.** — Savings banks may accept deposits subject to withdrawal or to be paid upon checks of the depositor. All such deposits shall be payable on demand, without notice, except when the deposit agreement provides otherwise. [I.C., § 26-1810, as added by 1997, ch. 310, § 3, p. 917.]

**Compiler's notes.** Former § 26-1810 was repealed by S.L. 1997, ch. 310, § 1,  
which comprised 1967, ch. 437, § 10, p. 1472 effective July 1, 1997.

**26-1811. Mutual savings banks — Ownership — Membership — Directors — Capital.** — (1) Members of a mutual savings bank are the owners of the mutual savings bank and shall possess voting rights and any other rights as are provided in the articles of incorporation or bylaws of the mutual savings bank.

(2) The membership of a mutual savings bank shall consist of those persons who either:

- (a) Hold deposit accounts in the mutual savings bank; or
- (b) Borrow funds or become obligated on a loan from the mutual savings bank, for as long as the loan remains unpaid and the debtor remains liable to the mutual savings bank for repayment of the loan.

(3) The board of directors of a mutual savings bank shall be elected by the members at the annual meeting required by section 26-213, Idaho Code. Voting for directors by deposit account holders shall be weighted according to the total amount of deposit accounts held by the members, subject to any maximum number of votes per member which a mutual savings bank may provide in its articles of incorporation. Voting rights for borrowers shall be fully described in a detailed manner in the articles of incorporation of the mutual savings bank.

(4) Mutual savings banks operating under this chapter shall at all times maintain capital at a level determined by the director to be adequate for the safe and sound operation of the savings bank. In addition to the capital plan required to be submitted to the director by section 26-1812, Idaho Code, each mutual savings bank shall periodically revise its capital plan upon written request by the director. All capital plans are subject to the approval of the director. Either failing to maintain adequate capital or operating without an approved capital plan are both violations of this chapter and grounds for sanctions under chapter 11, title 26, Idaho Code. [I.C., § 26-1811, as added by 1997, ch. 310, § 3, p. 917.]

**Compiler's notes.** Former § 26-1811 was repealed by S.L. 1997, ch. 310, § 1, which comprised 1967, ch. 437, § 11, p. 1472 effective July 1, 1997.

**26-1812. Conversions.** — All conversions from one (1) form of charter to another issued by the department shall be approved in advance in writing by the director. All conversion applications filed with the director involving savings banks, including conversion applications under section 26-1813, Idaho Code, shall include a plan for establishing and maintaining adequate capital to assure the continued safe and sound operation of the bank, savings bank or credit union. Capital plans shall be subject to the approval of the director.

(1) A federal savings and loan association or a federal savings bank, if organized on a capital stock basis, may convert its charter to that of an Idaho bank or a savings bank by proceeding in accordance with section 26-906, Idaho Code.

(2) A federal savings bank organized on a mutual basis may convert [convert] its charter to that of an Idaho mutual savings bank by filing an application in a form approved by the director.

(3) A savings bank may convert its state charter to a federal charter by complying with applicable federal law.

(4) A mutual savings bank may convert its form of organization to that of a stock savings bank by complying with section 26-1813, Idaho Code.

(5) A mutual savings bank may convert its form of organization to that of a credit union by filing an application in a form approved by the director.



(6) A stock savings bank may convert its charter to that of a state bank by proceeding in accordance with section 26-906, Idaho Code.

(7) A bank chartered under the Idaho bank act may convert its charter to that of a stock savings bank by filing an application on a form approved by the director.

(8) A credit union organized under chapter 21, title 26, Idaho Code, may change its charter to that of a mutual savings bank by filing an application on a form approved by the director.

(9) If permitted by federal law, a national bank may convert its charter to that of a stock savings bank by filing an application on a form approved by the director.

(10) If permitted by federal law, a federal credit union may convert its charter to that of a mutual savings bank by filing an application on a form approved by the director. [I.C., § 26-1812, as added by 1997, ch. 310, § 3, p. 917.]

**Compiler's notes.** Former § 26-1812 which comprised 1967, ch. 437, § 12, p. 1472; am. 1979, ch. 288, § 3, p. 733 was repealed by S.L. 1997, ch. 310, § 1, effective July 1, 1997.

Section 2 of S.L. 1997, ch. 310 is compiled as § 26-101.

The bracketed word "convert" in subsection (2) was inserted by the compiler.

**26-1813. Mutual to stock conversions.** — A mutual savings bank may change its form of organization to that of a stock savings bank by filing an application with the director.

As part of the application, the savings bank will include a plan of conversion, which the director may approve, with or without amendment, if it appears that:

- (1) After conversion the savings bank will be in sound financial condition;
- (2) The conversion will be fair and equitable to the members of the savings bank and no person whether member, employee or otherwise, will receive any inequitable gain or advantage by reason of the conversion;
- (3) The savings bank services provided to the public by the savings bank will not be adversely affected by the conversion;
- (4) The plan has been approved by a vote of two-thirds ( $\frac{2}{3}$ ) of the board of directors of the savings bank;
- (5) All shares of stock issued in connection with the conversion are offered first to the members of the savings bank;
- (6) All stock shall be offered to members of the savings bank and others under a formula and procedure that is fair and equitable and will be fairly disclosed to all interested persons; and
- (7) The plan provides a statement as to whether stockholders shall have preemptive rights to acquire additional or treasury shares of the savings bank.

The plan shall be submitted to the members, but only after it has been approved by the director. After lawful notice to the members of the savings bank and full and fair disclosure, the substance of the plan must be approved by a majority of the total votes that members of the savings bank are eligible and entitled to cast. The vote by the members may be in person or by proxy. Any votes by proxy must be specific to the plan and not a general



proxy. Following the vote of the members, the results of the vote certified by an appropriate officer of the savings bank shall be filed with the director. The director shall then either approve or disapprove the requested change in corporate form. After approval, the director shall supervise the conversion process and shall ensure that the process is conducted lawfully and under the approved plan. [I.C., § 26-1813, as added by 1997, ch. 310, § 3, p. 917.]

**Compiler's notes.** Former § 26-1813 was repealed by S.L. 1997, ch. 310, § 1, which comprised 1967, ch. 437, § 13, p. 1472 effective July 1, 1997.

**26-1814. Acquisitions.** — All acquisitions shall be approved in advance in writing by the director.

(1) A mutual or stock savings bank may acquire, as defined by section 26-2605, Idaho Code, a savings bank organized in the same form.

(2) A stock savings bank may acquire or be acquired by either a state or national bank with the state or national bank being the surviving bank.

(3) A mutual savings bank may acquire or be acquired by a credit union, with the mutual savings bank being the surviving entity.

(4) A stock savings bank may acquire or be acquired by a national or state bank with the national or state bank being the surviving entity. [I.C., § 26-1814, as added by 1997, ch. 310, § 3, p. 917.]

**Compiler's notes.** Former § 26-1814 am. 1979, ch. 288, § 4, p. 733 was repealed by which comprised 1967, ch. 437, § 14, p. 1472; S.L. 1997, ch. 310, § 1, effective July 1, 1997.

**26-1815. Foreign savings and loan associations.** — A savings and loan association or savings bank chartered and operating under the laws of another state which has received a valid permit from the director of finance to do business as a savings and loan association or savings bank within this state pursuant to an application filed with and approved by the director shall be authorized to conduct such business in this state. [I.C., § 26-1815, as added by 1997, ch. 310, § 3, p. 917.]

**Compiler's notes.** Former § 26-1815 which comprised 1967, ch. 437, § 15, p. 1472; am. 1974, ch. 180, § 3, p. 1474 was repealed by S.L. 1997, ch. 310, § 1, effective July 1, 1997.

**Sec. to sec. ref.** This section is referred to in § 26-1802.

**26-1816 — 26-1827. Revocation of approval of branch office or agency — Conversion to federal savings or state-chartered association — Voluntary liquidation — Reorganization, merger and consolidation — Sale of capital stock — Board of directors, qualifications, transactions and indemnification — Indemnity bonds — Meeting of shareholders. [Repealed.]**

**Compiler's notes.** These sections which comprised 1967, ch. 437, §§ 16—27, p. 1472; 1979, ch. 288, §§ 5—11, p. 733 were repealed by S.L. 1997, ch. 310, § 1, effective July 1, 1997.

**26-1828. Membership charges prohibited. [Repealed.]**

**Compiler's notes.** This section which comprised S.L. 1967, ch. 437, § 28, p. 1472, prohibiting membership charges, was repealed

by S.L. 1979, ch. 288, § 12 and S.L. 1997, ch. 310, § 1.

**26-1829 — 26-1851. Access to books and records — Financial statement — Annual audit and examinations — Fees — Powers of director of department of finance — Conservator, powers and duties — Receivers — Appointment and procedure — Correction of wrongdoings by unimpaired institution — Right to declaratory judgment — Communication from director — Certain practices prohibited — Preference in case of insolvency — Penalty. [Repealed.]**

**Compiler's notes.** These sections which comprised 1967, ch. 437, §§ 29 — 36, 82 — 96, p. 1472; am. 1969, ch. 310, § 3, p. 596; am. 1974, ch. 180, § 4, p. 1474; am. 1979, ch. 288,

§§ 13 — 19, p. 733; am. 1980, ch. 170, § 1, p. 362; am. 1984, ch. 47, §§ 2, 3, p. 76 were repealed by S.L. 1997, ch. 310, § 1, effective July 1, 1997.

**26-1852. Advisory board. [Repealed.]**

**Compiler's notes.** This section which comprised S.L. 1967, ch. 437, § 97, p. 1472, pro-

viding for an advisory board to the director, was repealed by S.L. 1979, ch. 288, § 20.

**26-1853, 26-1854. Effect of act on savings and loan associations qualified to do business under prior law — Oaths, subpoenas, punishment and exemption from criminal prosecution. [Repealed.]**

**Compiler's notes.** These sections which comprised I.C., §§ 26-1853 and 26-1854, as added by 1969, ch. 310, §§ 4 and 5, p. 956;

am. 1979, ch. 288, § 21, p. 733 were repealed by S.L. 1997, ch. 310, § 1, effective July 1, 1997.

**26-1855. Validity of transactions. [Repealed.]**

**Compiler's notes.** This section which comprised I.C., § 26-1855, as added by 1974, ch. 180, § 1, p. 1474; am. 1993, ch. 52, § 3, p. 133

was repealed by S.L. 1997, ch. 310, § 1, effective July 1, 1997.

**26-1856. Customer savings and loan communication terminal. [Repealed.]**

**Compiler's notes.** This section which comprised I.C., 26-1856, as added by 1979, ch. 288, § 22, p. 733; 1993, ch. 52, § 4, p. 133 was

repealed by S.L. 1997, ch. 310, § 1, effective July 1, 1997.

## CHAPTER 19

## SAVINGS AND LOAN ASSOCIATIONS — OPERATION

## SECTION.

26-1901 — 26-1946. [Repealed.]

**26-1901. Operating contracts to be approved by director. [Repealed.]**

**Compiler's notes.** This section which comprised 1967, ch. 437, § 37, p. 1472 was repealed by S.L. 1997, ch. 310, § 1, effective

July 1, 1997. For present law see § 26-1801 et seq.

**26-1902. Office to be separate from bank premises. [Repealed.]**

**Compiler's notes.** This section which comprised S.L. 1967, ch. 437, § 38, p. 1472, requiring an office of a savings and loan associ-

ation not to be on bank premises, was repealed by S.L. 1979, ch. 224, § 2.

**26-1903 — 26-1912. Advertising — Promotions — Premiums — Now accounts — Savings accounts. [Repealed.]**

**Compiler's notes.** These sections which comprised 1967, ch. 437, §§ 39 - 48, p. 1472; am. 1979, ch. 288, §§ 23 - 26, p. 733; am. 1981, ch. 195, § 1, p. 344; am. 1982, ch. 308,

§ 1, p. 773 were repealed by S.L. 1997, ch. 310, § 1, effective July 1, 1997. For present law see § 26-1801 et seq.

**26-1913. Accounts in two or more names. [Repealed.]**

**Compiler's notes.** This section which comprised S.L. 1967, ch. 437, § 49, p. 1472, was repealed by S.L. 1979, ch. 288, § 27.

**26-1914. Joint accounts by husband and wife. [Repealed.]**

**Compiler's notes.** This section which comprised S.L. 1967, ch. 437, § 50, p. 1472, was repealed by S.L. 1979, ch. 288, § 28.

**26-1915, 26-1916. Pledge to association of savings accounts in joint tenancy — Accounts of administrators, executors, guardians, custodians, trustees and other fiduciaries. [Repealed.]**

**Compiler's notes.** These sections which comprised 1967, ch. 437, §§ 51 and 52, p. 1472 were repealed by S.L. 1997, ch. 310 § 1,

effective July 1, 1997. For present law see § 26-1801 et seq.

**26-1917. Trust accounts where trust instrument not disclosed. [Repealed.]**

**Compiler's notes.** This section which comprised S.L. 1967, ch. 437, § 53, p. 1472, was repealed by S.L. 1979, ch. 288, § 29.



**26-1918 — 26-1920. Powers of attorney on savings accounts — Savings accounts as legal investments — Withdrawals. [Repealed.]**

**Compiler's notes.** These sections which comprised 1967, ch. 437, §§ 54 - 56, p. 1472; am. 1969, ch. 175, § 1, p. 528; am. 1979, ch.

288, § 30, p. 733 were repealed by S.L. 1997, ch. 310, § 1, effective July 1, 1997. For present law see § 26-1801 et seq.

**26-1921. Redemption. [Repealed.]**

**Compiler's notes.** This section which comprised S.L. 1967, ch. 437, § 57, p. 1472, was repealed by S.L. 1979, ch. 288, § 31.

**26-1922. Lien on savings accounts. [Repealed.]**

**Compiler's notes.** This section which comprised 1967, ch. 437, § 58, p. 1472 was repealed by S.L. 1997, ch. 310, § 1, effective

July 1, 1997. For present law see § 26-1801 et seq.

**26-1923. Interest on deposits. [Repealed.]**

**Compiler's notes.** This section which comprised I.C., § 26-1923, as added by 1979, ch. 288, § 33, p. 733 was repealed by S.L. 1997,

ch. 310, § 1, effective July 1, 1997. For present law see § 26-1801 et seq.

**26-1924, 26-1925. Method of paying interest on deposits — Computation of net income. [Repealed.]**

**Compiler's notes.** These sections which comprised 1967, ch. 437, §§ 60 and 61, p. 1472; am. 1979, ch. 288, § 34, p. 733 were

repealed by S.L. 1997, ch. 310, § 1, effective July 1, 1997. For present law see § 26-1801 et seq.

**26-1926. Allocation to net worth. [Repealed.]**

**Compiler's notes.** This section which comprised I.C., § 26-1926, as added by 1979, ch.

288, § 36, p. 733 was repealed by S.L. 1997, ch. 310, § 1, effective July 1, 1997.

**26-1927 — 26-1935. Dividends on capital stock — Use of undivided profits and expense fund contributions — Investment in securities — Loans, real estate loan plans and other investments — Loan expenses — Dealing with successors in interest — Enlargement of powers — Restrictions on lending transactions. [Repealed.]**

**Compiler's notes.** These sections which comprised 1967, ch. 437, §§ 63 — 71, p. 1472; am. 1969, ch. 310, § 6, p. 951; 1971, ch. 299, §§ 9.103 and 9.104, p. 1116; am. 1974, ch. 180, § 2, p. 1474; am. 1979, ch. 288, §§ 37 — 41, p.

733; am. 1981, ch. 184, § 1, p. 326 were repealed by S.L. 1997, ch. 310, § 1, effective July 1, 1997. For present law see § 26-1801 et seq.

**26-1936. Restrictions on terms. [Repealed.]**

**Compiler's notes.** This section which comprised I.C., § 26-1936, as added by 1982, ch. 297, § 2, p. 759 was repealed by S.L. 1997, ch.

310, § 1, effective July 1, 1997. For present law see § 26-1801 et seq.

**26-1937 — 26-1942. Restrictions on percentage of appraisal — Real estate loans on unimproved land — Participation in real estate loans — Sale and servicing of real estate loans — Valuation of real property on the books of an association — Revaluation of real property by director. [Repealed.]**

**Compiler's notes.** These sections which comprised 1967, ch. 437, §§ 73 — 78, p. 1472; am. 1979, ch. 288, §§ 43, 44, p. 733 were

repealed by S.L. 1997, ch. 310, § 1, effective July 1, 1997. For present law see § 26-1801 et seq.

**26-1943. Capital stock and reserve requirements. [Repealed.]**

**Compiler's notes.** This section which comprised S.L. 1967, ch. 437, § 79, p. 1472, was repealed by S.L. 1979, ch. 288, § 45.

**26-1944, 26-1945. Liquidity requirements — Borrowings. [Repealed.]**

**Compiler's notes.** These sections which comprised 1967, ch. 437, §§ 80 and 81; am. 1979, ch. 288, § 46, p. 733 were repealed by

S.L. 1997, ch. 310, § 1, effective July 1, 1997. For present law see § 26-1801 et seq.

**26-1946. Association as trustee. [Repealed.]**

**Compiler's notes.** This section which comprised I.C., § 26-1946, as added by 1976, ch. 237, § 1, p. 830 was repealed by S.L. 1997, ch.

310, § 1, effective July 1, 1997. For present law see § 26-1801 et seq.

**CHAPTER 20****CONSUMER FINANCE ACT****SECTION.**

26-2001 — 26-2050. [Repealed.]

**26-2001 — 26-2026. Small money lenders — License requirements — Prohibited conduct — Enforcement — Exceptions — Appeal — Separability. [Repealed.]**

**Compiler's notes.** These sections which comprised S.L. 1943, ch. 55, §§ 1-24, 26, p.

105; 1949, ch. 177, § 2, p. 375 were repealed by S.L. 1957, ch. 240, § 26, p. 582.

**26-2027 — 26-2050. Idaho Consumer Finance Act. [Repealed.]**

**Compiler's notes.** These sections, which comprised S.L. 1957, ch. 240, §§ 1-24, p. 582; am. 1965, ch. 51, § 1, p. 83, were repealed by S.L. 1971, ch. 299, § 9.106.

**CHAPTER 21****IDAHO CREDIT UNION ACT****SECTION.**

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**CORPORATE CREDIT UNIONS**

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26-2188. Severability.

**26-2101. Scope.** — This chapter shall be known as the “Idaho Credit Union Act” and shall be applicable to all persons except federal credit unions, operating as credit unions in the state of Idaho and to such other persons as shall subject themselves to its provisions, and to such persons who shall by violating any of its provisions become subject to the penalties provided herein. [I.C., § 26-2101, as added by 1977, ch. 213, § 2, p. 582.]

**Compiler’s notes.** Former sections 26-2101 — 26-2128 which comprised S.L. 1935, ch. 42, §§ 1-22; I.C., § 26-2123, as added by 1965, ch. 117, § 10; I.C., §§ 26-2124 — 26-2128, as added by 1970, ch. 59, § 6-10, were repealed by S.L. 1972, ch. 67, § 1.

For words “this act” or “this chapter” refer to S.L. 1977, ch. 213, compiled herein as §§ 26-2101 — 26-2151, 26-2170 — 26-2188.

**Sec. to sec. ref.** This chapter is referred to in §§ 26-1111, 26-1812 and 28-9-203.

**26-2102. Purpose.** — The purpose of this chapter is to allow groups of persons with a common bond as provided in this chapter to form private nonprofit cooperative corporations to be known as credit unions, to provide an opportunity for its members to use and control their own money in order to improve their economic and social condition, to promote thrift at a reasonable rate of return and provide a source of credit at fair and reasonable rates of interest to those persons included in the common bond. [I.C., § 26-2102, as added by 1977, ch. 213, § 2, p. 582.]

**Compiler’s notes.** Former section 26-2102 was repealed. See Compiler’s notes, § 26-2101.

For words “this chapter,” see Compiler’s notes, § 26-2101.

**26-2103. Supplementary general principles of law applicable.** — Unless displaced by the particular provisions of this chapter, the Uniform Commercial Code, the Uniform Consumer Credit Code, the Idaho securities act, the corporation laws of this state and the principles of law and equity, including the law relative to capacity to contract, principal and agent, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy, or other validating or invalidating cause supplement its provisions. [I.C., § 26-2103, as added by 1977, ch. 213, § 2, p. 582.]

**Compiler’s notes.** Former section 26-2103 was repealed. See Compiler’s notes, § 26-2101.

For words “this chapter,” see Compiler’s notes, § 26-2101.

The Uniform Commercial Code referred to in this section is compiled as §§ 28-1-101 — 28-10-104.

The Uniform Consumer Credit Code referred to in this section has been repealed. The present law on this subject, the Idaho Credit Code, is compiled as §§ 28-41-101 — 28-49-107.

The Idaho Securities Act referred to in this section is compiled as §§ 30-1401 — 30-1458.

**26-2104. Definition and use of terms.** — As used in this chapter unless the context otherwise requires:

(a) “Credit union” means a cooperative nonprofit corporation chartered under the provisions of this chapter.

(b) “Capital” means the shares of a credit union.

(c) “Director” means the director of the department of finance of the state of Idaho.

(d) “Federal supervisory agency” means the National Credit Union Administration.

(e) “Credit union services” means services such as draft and deposit sorting and posting, computation and posting of interest and other credits and charges, preparation and mailing of drafts, statements, notices, and similar items, or any other clerical, bookkeeping, accounting, statistical, or similar functions performed for a credit union.

(f) “Credit union service corporation” means a corporation organized to perform credit union services for two (2) or more credit unions, each of which owns part of the capital stock of such corporations, and which are subject to examination by either the department of finance of the state of Idaho or a federal supervisory agency.

(g) “Interstate credit union” means a credit union chartered under the provisions of this chapter or under the authority of the laws of another state and operating both in Idaho and in one (1) or more other states.

(h) “Invest” means any advance of funds to a credit union service corporation, whether by the purchase of stock, the making of a loan, or otherwise, except a payment for rent earned, goods sold and delivered, or services rendered prior to the making of such payment.

(i) “Surplus funds” means those funds which are not needed to meet a credit union’s members’ loan needs and credit union expenses.

(j) “Nonmembers’ certificates of indebtedness” means all funds received from individuals who are not members of the credit union must be called certificates of indebtedness and are to be shown on the books and records of the credit union as a separate and distinct category. The guaranteed rates of interest upon such certificates of indebtedness will be established by the board of directors. [I.C., § 26-2104, as added by 1977, ch. 213, § 2, p. 582; am. 1997, ch. 111, § 1, p. 269.]

**Compiler’s notes.** Former section 26-2104 was repealed. See Compiler’s notes, § 26-2101.

For words “this chapter,” see Compiler’s notes, § 26-2101.

Section 2 of S.L. 1997, ch. 111 is compiled as § 26-2107.

**26-2105. Organization.** — Any seven (7) or more residents of the jurisdiction of the state of Idaho, of legal age, who have a common bond referred to in section 26-2110, Idaho Code, may organize a credit union and become charter members thereof by:

(a) Filing an application furnished by the director.

(b) Executing in triplicate, articles of incorporation by the terms of which they agree to be bound, which articles shall state:

(1) The name, which shall include the words "credit union" and which must clearly indicate the common bond from which members will be taken and which is not the same name as that of any other existing credit union. A credit union may, however, do business in a name which includes only the initials of its name as it appears in its articles of incorporation and the words "credit union," and the city wherein the proposed credit union is to have its principal place of business;

(2) The term of existence of the credit union, which shall be perpetual;

(3) The par value of shares of the credit union, which shall be at least five dollars (\$5.00); and

(4) The names and addresses of the subscribers to the articles of incorporation, and the number of shares subscribed by each.

(c) Adopting bylaws for the general government of the credit union, consistent with the provisions of this chapter and executing the same in triplicate.

(d) Forwarding the required application fee, articles of incorporation and the bylaws to the director. If they conform to the statute, he shall endorse the articles of incorporation and return two (2) copies of the endorsed articles of incorporation and two (2) copies of the bylaws to the applicants of the credit union, one (1) copy of which is to be for the credit union's permanent files and the other copy to be filed with the county recorder's office in the county in which the principal place of business is located and with the department of finance. The original copy of the articles of incorporation and bylaws shall be retained by the department of finance. If the director approves or endorses the articles of incorporation, he will issue three (3) charters in original. The director shall have the authority to investigate the application for charter to determine whether the proposed credit union does meet the objectives of this chapter. The determination for the approval of the application for charter shall be under such rules and regulations as shall be adopted by the director. These rules and regulations shall give account to the number of potential members, their stability of employment or membership in the group comprising the common bond of membership and the economic characteristics of the proposed common bond. If, in the opinion of the director, the proposed credit union does not meet these objectives, the charter application shall be denied.

(e) The subscribers for a credit union charter shall not transact any business until formal approval of the charter has been received. In order to simplify the organization of credit unions, the director shall cause to be prepared a form of articles of incorporation and a form of bylaws, consistent with this chapter, which shall be used by credit union incorporators for their guidance.

(f) The articles of incorporation filed in the department of finance shall be available for inspection and a copy may be provided upon payment of an appropriate fee. [I.C., § 26-2105, as added by 1977, ch. 213, § 2, p. 582.]



**Compiler's notes.** Former section 26-2105 was repealed. See Compiler's notes, § 26-2101.

For words "this chapter," see Compiler's notes, § 26-2101.

**26-2106. Amendments.** — The articles of incorporation or the bylaws may be amended as provided in the bylaws. Any and all proposed amendments to the articles of incorporation or bylaws shall be submitted in writing to the director of finance for approval before they are submitted to a vote by the members. Amendments approved by the members shall become effective upon certification of member approval in writing to the director. A copy of the articles of incorporation or bylaws, as amended, shall be submitted to the director within sixty (60) days after the effective date of an amendment. [I.C., § 26-2106, as added by 1977, ch. 213, § 2, p. 582.]

**Compiler's notes.** Former section 26-2106 was repealed. See Compiler's notes, § 26-2101.

**Sec. to sec. ref.** This section is referred to in § 26-2172.

**26-2107. Restrictions.** — Any person, corporation, copartnership or association, except a credit union organized under the provisions of this chapter, an interstate credit union with a permit issued under section 26-2152, Idaho Code, the federal credit union act, 48 Statute 1216 (1934), 73 Statute (1959), 12 U.S.C. 192, or the Idaho credit union league, a recognized chapter of the Idaho credit union league, using a name or title containing the words "credit union" or any derivation thereof or representing themselves in their advertising or otherwise conducting business as a credit union shall be fined not more than one thousand dollars (\$1,000) or imprisoned not more than one (1) year, or both, and may be permanently enjoined from using such words in its name. [I.C., § 26-2107, as added by 1977, ch. 213, § 2, p. 582; am. 1997, ch. 111, § 2, p. 269.]

**Compiler's notes.** Former section 26-2107 was repealed. See Compiler's notes, § 26-2101.

Sections 1 and 3 of S.L. 1997, ch. 111 are compiled as §§ 26-2104 and 26-2145, respectively.

For words "this chapter," see Compiler's notes, § 26-2101.

**26-2108. Corporate powers.** — A credit union shall have power to:

- (a) Make contracts.
- (b) Sue and be sued in the name of the credit union.
- (c) Adopt and use a common seal and alter same at pleasure.
- (d) Own, hold or use any real property or any interest therein as provided in section 26-2109, Idaho Code.
- (e) May require the payment of an entrance or membership fee, not to exceed one dollar (\$1.00), of any applicant admitted to membership.
- (f) Receive from its members payments on shares and deposits, including the right to conduct Christmas share clubs, vacation clubs, and other such thrift organizations within the membership.
- (g) Lend its funds to its members as hereinafter provided.
- (h) Purchase insurance on the lives of its members in an amount equal to their respective share and loan balances.

(i) Borrow from any financial institution or individuals in an aggregate amount not to exceed fifty per cent (50%) of its members' shares and deposits.

(j) May invest any surplus funds in such investments as provided for in this chapter.

(k) Make deposits in federally insured banks and savings and loan companies in Idaho, in state or federally chartered credit unions in Idaho and in the Idaho Corporate Credit Union.

(l) Hold membership in other state or federally chartered credit unions in Idaho, in the Idaho Credit Union League, in the Idaho Corporate Credit Union and in other organizations composed of credit unions approved by the director.

(m) Declare dividends on members' shares and fix the rates on interest paid on members' certificates of deposit, nonmembers' certificates of indebtedness, and other thrift accounts as provided for in this chapter.

(n) Fine members for failure to meet punctually obligations to such credit union.

(o) In the event of default, impress a lien upon the shares and deposits and accumulation of dividends and interest of any member to the extent of any loans made to him directly or indirectly, or on which he is surety and for any dues or charges or fines payable by him; the credit union shall also have the right of setoff with respect to every such account.

(p) Relocate its head office or branches and the location of its books and records upon written notice to the director.

(q) Collect, receive and disburse monies in connection with sales of travelers' checks, money orders and for such other purposes as may provide convenience or benefit for its members.

(r) Exercise such incidental powers as are necessary to carry on the business for which it is incorporated not inconsistent with the provisions of this chapter.

(s) Form and operate a credit union service corporation as provided in section 26-2147, Idaho Code.

(t) Provide for its members, share and deposit accounts from which the member may withdraw funds by the use of a negotiable instrument.

(u) Participate in systems which allow the transfer of credit union funds or the shares or deposits of members by electronic means and hold membership in automated clearing house associations or corporations.

(v) Sell all or part of its assets to another credit union, to purchase all or part of the assets of another credit union and to assume the liabilities of the selling credit union and those of its members subject to the approval of the director. [I.C., § 26-2108, as added by 1977, ch. 213, § 2, p. 582; am. 1982, ch. 210, § 1, p. 583; am. 1987, ch. 80, § 1, p. 80.]

**Compiler's notes.** Former section 26-2108 was repealed. See Compiler's notes, § 26-2101.

For words "this chapter," see Compiler's notes, § 26-2101.



**26-2109. Limitations of corporate powers.** — A credit union shall have power to own, hold or use any property or any interest therein subject to the following limitations:

(a) Land and buildings: any office, branch office, customer-credit union communication terminal, drive-up teller, service center, parking lot, other facility or real estate where the credit union transacts or will transact business. The amount invested shall be limited to four and one-half per cent (4 ½%) of its members' shares and deposits. This limitation may only be increased with the prior written approval of the director.

(b) Furniture, fixtures and equipment: all office furnishings including but not limited to tables, chairs, desks, file cabinets, curtains, drapes, rugs, office machines and computer hardware if the credit union does not own a central processing unit. The amount invested shall be limited to one and one-half per cent (1 ½%) of its members' shares and deposits. This limitation may only be increased with the prior written approval of the director.

(c) In-house computer system: a central processing unit including all related hardware and software. The amount invested shall be limited to one and one-half per cent (1 ½%) of its members' shares and deposits. This limitation may only be increased with the prior written approval of the director.

(d) The limitations enumerated in subsections (a), (b) and (c) of this section shall not extend to any real property which may be conveyed to the credit union in public satisfaction of debts previously contracted in the course of business, nor to such real estate as the credit union shall purchase at sale on judgments, decrees, mortgage or deed of trust foreclosures under securities held by the credit union, but a credit union shall not bid at such sale a larger amount than is necessary to satisfy its debts and costs. Any moneys expended in this manner shall be accounted for in a property foreclosure asset account and separated from real property used for credit union operations.

(e) The provisions of this subsection (e) shall apply only to credit unions which, as of the effective date [July 1, 1982] of this section, have an amount invested in any of the categories of property enumerated in subsections (a), (b) and (c) of this section which exceed one or more of the limitations expressed in those subsections. Any such credit union will not be in violation of this section by virtue of its having, as of the effective date of this section, an amount invested in one or more of the categories of property enumerated in subsections (a), (b) and (c) which exceed one or more of the limitations expressed in those subsections. Provided, however, that for each of the categories of property in which the amount invested by such credit union exceeds a limitation expressed in subsection (a), (b) or (c), as of the effective date of this section, such credit union may not thereafter acquire additional property of that category without the prior written approval of the director.

(f) For the purposes of this section, the amount which a credit union has invested in property of any of the enumerated categories shall be measured by the depreciated cost of that property as stated on the books of the credit union. No credit union may alter the depreciated cost of any such property stated on its books for the purpose of avoiding the requirements of this section. [I.C., § 26-2109, as added by 1982, ch. 53, § 2, p. 80.]



**Compiler's notes.** A former section 26-2109 was repealed. See Compiler's notes, § 26-2101.

Another former § 26-2109, which com-

prised I.C., § 26-2109, as added by 1977, ch. 213, § 2, p. 582, was repealed by S.L. 1982, ch. 53, § 1.

**26-2110. Membership.** — (a) The membership of a credit union shall be limited to and consist of the subscribers to the articles of incorporation and such other persons having the common bond set forth in the articles of incorporation as have been duly admitted members, have paid the entrance fee, if any, as provided in the bylaws, have subscribed and paid for one or more shares, and have complied with such other requirements as the articles of incorporation or bylaws may specify.

(b) Credit union organizations shall be limited to groups having a common bond of occupation or association, or to residents within a well-defined neighborhood, community, or rural district, employees of a common employer, or members of a bona fide fraternal, religious, cooperative, labor, rural, educational, or similar organization and members of the immediate family of such persons.

(c) Societies and associations composed entirely of individuals who are within the field of membership of the credit union may be admitted to membership in the same manner and under the same conditions as individuals.

(d) An individual who leaves the field of membership may be permitted to retain his membership in the credit union at the discretion of the board, and as provided in the bylaws.

(e) An employer, including the state and its political subdivisions, may become a member of a credit union, of which its employee is a member, only for the purpose of placing shares or deposits in the credit union pursuant to an employee deferred compensation plan qualified under chapter 400 of the internal revenue code of 1954, as amended, or other retirement plans set out in section 26-2151, Idaho Code.

(f) Credit unions may become members of other Idaho credit unions for the purposes provided in section 26-2120, Idaho Code. [I.C., § 26-2110, as added by 1977, ch. 213, § 2, p. 582; am. 1980, ch. 69, § 1, p. 144.]

**Compiler's notes.** Former § 26-2110 was repealed. See Compiler's notes, § 26-2101.

Chapter 400 of the Internal Revenue Code of 1954 referred to in subsection (e) of this

section is compiled as 26 U.S.C., § 401 et seq.

**Sec. to sec. ref.** This section is referred to in §§ 26-2105, 26-2132 and 26-2152.

**26-2111. Expulsion and/or withdrawal from field or membership.** — A member of a credit union may be expelled by the board but only after an opportunity has been given him to be heard for the purpose of such expulsion. A written notice of this hearing setting forth the time, place, and date for such meeting shall be forwarded to the member by the board together with the charges which serve as the basis for the expulsion. The member may be expelled for failure to meet the conditions of his membership, failure to carry out his obligations to the credit union, conviction of a felony, neglect or refusal to comply with the provisions of the laws under which this credit union operates and the bylaws of the credit union, and

habitual neglect to pay obligations. Upon completion of the hearing, and if the board has voted to expel the member, the member shall remain liable for any sums owed to the credit union for loans or other purposes. The credit union may require twenty (20) days' written notice to withdraw shares and/or deposits by the member, as funds become available. [I.C., § 26-2111, as added by 1977, ch. 213, § 2, p. 582.]

**Compiler's notes.** Former § 26-2111 was repealed. See Compiler's notes, § 26-2101.

**26-2112. Fiscal year.** — The fiscal year of all credit unions organized under this chapter shall end on the last day of December. [I.C., § 26-2112, as added by 1977, ch. 213, § 2, p. 582.]

**Compiler's notes.** Former § 26-2112 was repealed. See Compiler's notes, § 26-2101.

For words "this chapter," see Compiler's notes, § 26-2101.

**Sec. to sec. ref.** This section is referred to in § 26-2185.

**26-2113. Meetings.** — The annual meeting and special meetings shall be held at the time and in the manner indicated in the bylaws. At all such meetings the member shall have but one (1) vote, irrespective of his shareholdings. No member may vote by proxy, but a society or association having membership in the credit union may be represented and vote by one (1) of its members or shareholders, providing such person has been duly authorized by the governing board of said society or association to represent it. [I.C., § 26-2113, as added by 1977, ch. 213, § 2, p. 582.]

**Compiler's notes.** Former § 26-2113 was repealed. See Compiler's notes, § 26-2101.

**26-2114. Official family.** — The business affairs of the credit union shall be managed by a board of directors of not less than five (5) directors, all to be elected at the annual meeting of the members, by and from the membership. A credit committee of not less than three (3) members and a supervisory committee of at least three (3) members are to be appointed by the board of directors as provided in the bylaws. [I.C., § 26-2114, as added by 1977, ch. 213, § 2, p. 582.]

**Compiler's notes.** Former § 26-2114 was repealed. See Compiler's notes, § 26-2101.

**26-2115. Officers.** — (1) Within ten (10) days following the organizational meeting and each annual meeting, the directors shall elect from their own number a chairman of the board, one (1) or more vice-chairmen, and a secretary. They shall also elect any other officers that are specified in the bylaws.

(2) The terms of the officers shall be one (1) year, or until their successors are chosen and have been duly qualified. The chairman and secretary shall execute a certificate of election, on a form approved by the department of finance, which shall set forth the names and addresses of the officers,



directors, and committee members elected or appointed. One (1) copy of the certificate of election shall be filed with the department of finance within ten (10) days after such election or appointment.

(3) The duties of the officers and committees shall be prescribed in the bylaws.

(4) The board of directors shall appoint a president to act as the chief executive officer of the credit union and be in active charge of its operations.

(5) Notwithstanding any other provision of this chapter, a credit union may use any titles it chooses for the officials holding the positions described in this section, as long as such titles are not misleading. [I.C., § 26-2115, as added by 1977, ch. 213, § 2, p. 582; am. 1988, ch. 158, § 1, p. 285.]

**Compiler's notes.** Former § 26-2115 was repealed. See Compiler's notes, § 26-2101. Section 2 of S.L. 1988, ch. 158 is compiled as § 26-2142.

**26-2116. Board of directors.** — The board shall have the general management of the affairs, funds, and records of the credit union and shall meet as often as necessary, but not less than once each month. It shall be the special duty of the directors to:

(a) Act upon applications for membership; or, to appoint a membership committee or membership officers from among the members of the credit union other than the treasurer, and assistant treasurer, who may be authorized by the board to approve applications for membership under such conditions as the board may prescribe; except that such committee or membership officer so authorized shall submit to the board at each monthly meeting a list of approved or pending applications for membership received since the previous monthly meeting, together with such other related information as the bylaws or the board may require.

(b) Purchase a blanket fidelity bond in a form prescribed or approved by the director, covering the officers, employees, members of official committees, attorneys-at-law and other agents, with protection against loss caused by dishonesty, burglary, robbery, larceny, theft, holdup, forgery or alteration of instruments, misplacement or mysterious disappearance and for faithful performance of duty. The department of finance shall prescribe in its rules and regulations the amount of minimum bond coverage required for all credit unions according to their asset categories. At any time that a credit union does not have a bond in force and effect the board of directors of the credit union shall automatically suspend all operations of the credit union until such time as a new bond becomes effective.

(c) Determine from time to time the rate(s) of interest consistent with the provisions of this chapter which shall be charged on loans and determine the rate(s) of interest refunds, if any, to be paid to borrowing members, the qualifications for participation, and the manner of computation and payment. Such interest rebates are to be paid from the credit balance of the current earnings period.

(d) To declare dividends and fix the rates of interest on members' certificates of deposit, nonmembers' certificates of indebtedness and other thrift accounts as provided for in this chapter.



(e) Fill vacancies occurring between annual meetings on the board, credit committee, and supervisory committee until the election or appointment and qualification of their successors.

(f) Fix from time to time the maximum amount, both secured and unsecured, which may be loaned to any one (1) member, and determine the maximum individual shareholdings.

(g) Have charge of the investment of surplus funds of the credit union in such investments as provided in this chapter.

(h) Authorize the employment of such persons or persons as may be necessary to carry on the business of the credit union and shall authorize the compensation of such employees.

(i) Authorize the conveyance of property.

(j) Borrow or lend money to carry on the functions of the credit union.

(k) Designate a depository or depositories for the funds of the credit union.

(l) Upon two-thirds ( $\frac{2}{3}$ ) approval, the board may suspend any or all members of the credit or supervisory committees for failure to perform their duties subject to a hearing to be held within twenty (20) days.

(m) Establish and provide auditing assistance requested by the supervisory committee.

(n) Any officer, director, or committee member who fails to attend regular meetings for three (3) consecutive meetings without cause, or who otherwise fails to perform any of the duties required of him as an official, may be suspended from his official position, but only after such official has been given reasonable notice of a meeting for suspension and the opportunity to be heard on such charges.

(o) Perform or authorize any action consistent with this chapter not specifically reserved by the bylaws or this chapter for the members.

(p) The board may appoint from its own members an executive committee to exercise such authority as may be delegated to it by the board between meetings of the board. [I.C., § 26-2116, as added by 1977, ch. 213, § 2, p. 582.]

**Compiler's notes.** Former § 26-2116 was repealed. See Compiler's notes, § 26-2101.

For words "this chapter," see Compiler's notes, § 26-2101.

The "s" enclosed in parentheses in subdivision (c) so appeared in the law as enacted.

**26-2117. Penalties for official misconduct.** — Any officer, director, or committee member or loan officer of a credit union who knowingly permits a loan to be made or participates in a loan to a nonmember is guilty of a misdemeanor and shall be primarily liable to the credit union for the amount thus illegally loaned and the illegality of such a loan shall be no defense in any action of the credit union to recover on the loan.

Any officer, director, committee member, agent or employee who knowingly makes or subscribes to false entries or exhibits a false or fictitious paper, instrument, or security to a person authorized to examine the credit union books and records shall be guilty of a felony.

Any officer, director, committee member, agent or employee who receives payments on shares knowing the credit union is insolvent shall be guilty of a misdemeanor. [I.C., § 26-2117, as added by 1977, ch. 213, § 2, p. 582.]

**Compiler's notes.** Former § 26-2117 was repealed. See Compiler's notes, § 26-2101. **Sec. to sec. ref.** This section is referred to in § 26-2185.

**26-2118. Credit committee.** — The credit committee shall have the general supervision of all loans to members. It shall be the duty of the credit committee to review all applications for loans, to ascertain whether or not such loan would be for a provident and productive purpose and would benefit the applicant, and to determine whether or not the security offered, in its judgment, is sufficient and the terms of the application proper. The credit committee shall meet as often as may be required, and at least once each month to review delinquent loans, and shall keep a record of all actions taken at each meeting and shall submit a written report to the members at the annual meetings and to the board monthly.

The credit committee, upon approval of the board, may appoint one (1) or more loan officers to act under the supervision of the credit committee and such loan officer, when so appointed, may make loans without necessity for a meeting of or approval by any members of the credit committee, as provided in the bylaws. No more than one (1) member of the credit committee may serve in the position of loan officer. No individual shall have authority to disburse funds of the credit union for any loan which has been approved by him in his capacity as loan officer except that the loan officer may disburse loans approved by him which are fully secured by shares or which do not exceed the credit union's unsecured loan limit set by the board of directors.

No member of the credit committee may serve as a member of the board of directors or supervisory committee while serving as a member of the credit committee. [I.C., § 26-2118, as added by 1977, ch. 213, § 2, p. 582.]

**Compiler's notes.** Former § 26-2118 was repealed. See Compiler's notes, § 26-2101.

**26-2119. Loans to members.** — (a) A credit union may loan to members for a provident or productive purpose and upon such security as the bylaws may provide, and the credit committee or loan officer shall approve. If permitted by law the borrowing members may be charged for the cost of filing fees on security instruments in connection with the transaction. Every application for a loan shall be made upon a form, which the credit committee prescribes and the board approves, which shall state the purpose for which the loan is desired and the security, if any, offered. Every loan shall be evidenced by a written instrument. No secured or unsecured loan shall be made to any member in excess of the limits set by written board policy. No loan shall be made unless it has been approved in writing by a loan officer or has received majority approval of the members of the credit committee present when the loan was considered, which members present shall constitute at least a majority of the credit committee.



(b) Loans may be made to, cosigned, endorsed, or guaranteed by members of the board, credit committee, and supervisory committee under the same general terms and conditions as to other members of the credit union. Any loan made to, cosigned, endorsed or guaranteed by members of the official family shall require the additional two-thirds ( $\frac{2}{3}$ ) written agreement of all members of the board and credit committee where such loan or aggregate of such loans exceed the unsecured loan limit of the credit union plus the unencumbered share balance of the borrowing official.

(c) Loans may be granted to members of the credit union, secured by a first mortgage or deed of trust on improved real estate. Such loans shall not exceed eighty percent (80%) of the appraised value of the real estate made by an independent qualified appraiser and such loans shall provide additionally substantial equal monthly payments for the payment of insurance premiums and taxes assessed against the security, or in lieu thereof, the credit union may accept the assignment of a savings passbook. The total outstanding balance of loans secured by a mortgage or deed of trust on real estate shall not exceed fifteen percent (15%) of the members' shares and deposits in the credit union, and shall be amortized in monthly payments for a maturity of not more than twenty (20) years. Notwithstanding the above, a credit union may make residential real estate loans which are made to finance the acquisition of a one (1) to four (4) family dwelling for the principal residence of a credit union member, which is secured by a first lien upon such dwelling, and which may have a maturity not exceeding thirty (30) years, if the credit union has previously obtained a commitment to sell the loan on the secondary market and does sell the loan no later than ninety (90) days from the date the funds are disbursed.

(d) A credit union may advance funds secured by a second mortgage or deed of trust on real estate. The total balance of the first and second mortgage or deed of trust combined shall not exceed eighty percent (80%) of the appraised value of the real property secured by the mortgage or deed of trust. Total second mortgage loans or deeds of trust on real estate shall not exceed ten percent (10%) of the members' shares and deposits in the credit union. At the time a loan secured by a second mortgage or deed of trust is granted the credit union must have an appraisal performed by an independent qualified appraiser.

(e) A credit union may loan to members under the provisions of titles I and II of the national housing act and such insurance on these loans shall be deemed adequate security. The terms of such loans shall be as defined by the credit committee or under the provisions of titles I and II of the national housing act.

(f) In addition to generally accepted types of security, the assignment of shares in a manner consistent with the laws of Idaho, shall be deemed security within the meaning of this chapter and the adequacy of all securities shall be within the determination of the credit committee or loan officer subject to the provisions of this chapter and the bylaws. A member may pay the whole or any part of his loan on any day in which the credit union office is open for business.

(g) The credit committee, or when authorized, the loan officer, may approve in advance upon application by a member, an extension of credit,



and loans may be granted to such members within the limits of such extension of credit. Where an extension of credit has been approved, applications for loans need no further consideration as long as the aggregate obligation does not exceed the limits of such extension of credit. The credit committee shall, at least once a year, review all extensions of credit and any extension of credit shall expire if the member becomes more than sixty (60) days delinquent in his obligations to the credit union.

(h) The director may, in his discretion, require any credit union to obtain a certified appraisal on any real estate secured loan. [I.C., § 26-2119, as added by 1977, ch. 213, § 2, p. 582; am. 1980, ch. 194, § 1, p. 429; am. 1982, ch. 211, § 1, p. 584; am. 1987, ch. 139, § 1, p. 272; am. 1991, ch. 236, § 1, p. 566.]

**Compiler's notes.** Former § 26-2119 was repealed. See Compiler's notes, § 26-2101.

For words "this chapter," see Compiler's notes, § 26-2101.

The National Housing Act referred to in

subsection (e) of this section is compiled as 12 U.S.C., § 1701 et seq.

Section 2 of S.L. 1991, ch. 236 is compiled as § 26-2121.

**26-2120. Loans to other credit unions who are members.** — A credit union may make loans to other credit unions who are its members with a maximum maturity of one (1) year and in an amount that shall not in total exceed ten percent (10%) of the shares and certificates of deposit of the credit union. [I.C., § 26-2120, as added by 1977, ch. 213, § 2, p. 582.]

**Compiler's notes.** Former § 26-2120 was repealed. See Compiler's notes, § 26-2101.

**Sec. to sec. ref.** This section is referred to in § 26-2110.

**26-2121. Supervisory committee.** — (a) The supervisory committee shall make or cause to be made, at least annually, an examination of the affairs of the credit union, including an audit of its accounting records and reports; shall submit a written report of its annual examination and audit to the board and to the members at the next annual meeting of the credit union.

(b) The supervisory committee shall cause the passbook and accounts of the members to be verified with the records of the treasurer from time to time, and not less frequently than once each year. The term "accounts" shall include any passbook, loan account, statement of accounts, or other pertinent or related record.

(c) Additional audits, examinations or verifications of member accounts may be made as deemed necessary by the supervisory committee or as directed by the board of directors.

(d) If the annual examination is not conducted by the supervisory committee or is deemed to be unsatisfactory to the director, the board of directors of the credit union may be required by the director to contract for an outside examination acceptable to the director.

(e) Notwithstanding any other provision of law to the contrary, the supervisory committee of a state or federally chartered credit union may contract with the Idaho credit union league, or any of its subsidiary organizations, for preparation of any reports the supervisory committee is

required by law to submit to the board of directors, and the Idaho credit union league, or its subsidiaries, may perform such function on behalf of the supervisory committee and any report prepared thereby may be accepted by the board of directors or any governmental entity in lieu of any supervisory committee report required under this section.

(f) By unanimous vote, the supervisory committee, if it deems such action to be necessary to the proper conduct of the credit union, may suspend any officer, director or member of the committee and call the members together to act on such suspension. The members at said meeting may sustain such suspension and remove said officer permanently or may reinstate said officer.

(g) By majority vote the supervisory committee may call a special meeting of the members to consider any matter submitted to it by said meeting. [I.C., § 26-2121, as added by 1977, ch. 213, § 2, p. 582; am. 1986, ch. 237, § 1, p. 648; am. 1991, ch. 236, § 2, p. 566.]

**Compiler's notes.** Former § 26-2121 was repealed. See Compiler's notes, § 26-2101.      compiled as §§ 26-2119 and 26-2128, respectively.

Sections 1 and 3 of S.L. 1991, ch. 236 are

**26-2122. Compensation — Credit union manager, employment. —**

No officer, director, or committee member may be compensated, directly or indirectly, for his services as such; provided, however, an elected member of the board of directors may serve as a part-time treasurer and receive a salary for his services. This shall not be construed to prevent reimbursement of directors and committee members for actual expenses they may incur in carrying out the duties of their office. The board may authorize the employment of a credit union manager and other employees as needed to conduct the business of the credit union. The board shall establish the compensation to be paid to the manager and any other employees of the credit union which shall be charged as an expense of the credit union. In the event the board of directors authorizes the employment of a manager of the credit union, the manager may not be a member of the board of directors. The credit union may provide group hospitalization and group health and accident insurance for the directors, officers and committee members which will not be considered compensation. [I.C., § 26-2122, as added by 1977, ch. 213, § 2, p. 582.]

**Compiler's notes.** Former § 26-2122 was repealed. See Compiler's notes, § 26-2101.      As enacted the section heading of this section read "Compensation."

**26-2123. Shares and certificates of deposit. —** A share may be in increments of five dollars (\$5.00) with a minimum of five (\$5.00) and a maximum of twenty-five dollars (\$25.00) as the board of directors shall establish. The shares of a credit union shall all be common shares of one (1) class and have a par value as established by the board and bylaws. A member may purchase shares which will earn dividends as duly established by the board pursuant to section 26-2130, Idaho Code. Members may also purchase certificates of deposit which will be for a specified length of time and earn interest with a guaranteed rate to be established by the board of



directors pursuant to section 26-2130, Idaho Code. No certificate shall be issued to denote ownership of a share of the credit union. Shares paid for may be transferred in such manner as the bylaws may prescribe.

In the event of default the credit union shall have and may exercise a lien on the shares and deposits of any member for any sum due the credit union from said member or for any loan made to, cosigned or endorsed by him. Christmas clubs, vacation clubs, travel clubs and other thrift organizations within the membership, which shall have the prior approval of the director of finance, may be established by the board of directors. [I.C., § 26-2123, as added by 1977, ch. 213, § 2, p. 582.]

**Compiler's notes.** Former § 26-2123 was repealed. See Compiler's notes, § 26-2101.

**26-2124. Joint accounts.** — A member may designate any person or persons to hold shares, deposits, and thrift club accounts with him in joint tenancy with the right of survivorship; but no joint tenant, unless a member in his own right, shall be permitted to vote, obtain loans, or hold office. Payment of part or all of such accounts to any of the joint tenants shall, to the extent of such payment, discharge the liability to all.

No credit union organized under the laws of this state shall be required to recognize the claim of any third party of any of the above such accounts or withhold payment of any such accounts to the depositor or to his order, unless and until the credit union is served with citation or other appropriate process issuing out of a court of competent jurisdiction in connection with a suit instituted by such third party for the purpose of recovering or establishing an interest in such above accounts.

Such above accounts issued by any credit union organized under the laws of this state in the name of two (2) or more persons or to two (2) or more persons or the survivor of either, may be withdrawn on the signature of either party of whom such accounts were issued, or in whose name such accounts were made, and no recovery shall be had against such credit union for amounts so paid. When such accounts are issued in the name of two (2) or more persons or in the name of their survivor, the survivor of either party shall have power to act in all matters relating to such accounts whether the other person or persons named in such accounts be living or dead. The repurchase or withdrawal value of such accounts issued in joint names and dividends thereon, or other rights relating thereto, may be paid or delivered, in whole or in part, to any such person who shall make requests therefor, whether the other person or persons be living or dead. The payment or delivery to any such person, on a receipt or acquittance signed by any such person, to whom any such payment or any such delivery of rights be made, shall be valid and sufficient release and discharge of any such credit union for the payment or delivery so made. [I.C., § 26-2124, as added by 1977, ch. 213, § 2, p. 582.]

**Compiler's notes.** Former § 26-2124 was repealed. See Compiler's notes, § 26-2101.



**26-2125. Minors.** — Shares, deposits or thrift club accounts may be issued in the name of a minor and such above accounts may be withdrawn by such minor and payments made on such withdrawals shall be valid. [I.C., § 26-2125, as added by 1977, ch. 213, § 2, p. 582.]

**Compiler's notes.** Former § 26-2125 was repealed. See Compiler's notes, § 26-2101.

**26-2126. Trust accounts.** — Share [Shares] may be issued in the name of a member in trust for a beneficiary, including a minor, but no beneficiary, unless a member in his own right, may be permitted to vote, obtain loans, hold office or be required to pay an entrance fee. Payment of part or all of such shares to such member shall, to the extent of such payment, discharge the liability of the credit union to the member and the beneficiary, and the credit union shall be under no obligation to see the application of such payment. In the event of the death of the member, and if shares are so issued or held and the credit union has been given no other written evidence of the existence or terms of any trust, such shares and any dividends or interest thereon shall be paid to the beneficiary. [I.C., § 26-2126, as added by 1977, ch. 213, § 2, p. 582.]

**Compiler's notes.** Former § 26-2126 was repealed. See Compiler's notes, § 26-2101. The bracketed word "Shares" was inserted by the compiler.

**26-2127. Investments.** — Funds not used for loans to members may be invested in:

(a) Obligations fully guaranteed as to principal and interest by the United States government;

(b) Time certificates of deposits issued by any state or federally chartered bank within the state of Idaho whose accounts are insured by the federal deposit insurance corporation. Such time certificates of deposit may be made in an amount not to exceed the greater of the federal deposit insurance corporation insurance limits or one percent (1%) of the issuing bank's total deposits;

(c) Time certificates of deposit or savings accounts in any state or federally chartered savings and loan association within the state of Idaho whose accounts are insured by the federal deposit insurance corporation in an amount not to exceed the greater of the federal deposit insurance corporation insurance limit or one percent (1%) of the savings and loan's withdrawable savings liability;

(d) Shares of stock in a credit union service corporation as provided in this chapter;

(e) Shares or deposits of a corporate credit union in an amount not to exceed ten percent (10%) of the corporate credit union's total outstanding shares, provided that the director may approve an investment in shares or deposits in excess of the ten percent (10%) limitation contained in this subsection; and

(f) Shares in the Idaho league services corporation. [I.C., § 26-2127, as added by 1977, ch. 213, § 2, p. 582; am. 1999, ch. 276, § 1, p. 690.]

**Compiler's notes.** Former § 26-2127 was repealed. See Compiler's notes, § 26-2101. For words "this chapter," see Compiler's notes, § 26-2101.

**26-2128. Liquidity requirements.** — (a) Every credit union shall have on hand as a liquidity reserve an amount equal to four percent (4%) of its outstanding shares, certificates of deposit, and certificates of indebtedness. Share or deposit accounts from which a member may withdraw funds by the use of a negotiable instrument shall be subject to the liquidity reserve requirements of subsection (b) of this section and not to the liquidity reserve requirements of this subsection. Said liquidity reserves, except as hereinafter otherwise provided, shall be kept in cash on hand or on deposit subject to check or draft, with any bank or banks or corporate credit union located in the state of Idaho, which shall have been approved by the director as liquidity reserve depositories and shall be computed monthly as follows: on the basis of average daily bank deposits and average daily cash on hand.

(b) Every credit union which provides for its member's share or deposit accounts from which the member may withdraw funds by the use of negotiable instrument shall have on hand as a liquidity reserve in addition to the liquidity reserve required by subsection (a) of this section an amount equal to ten percent (10%) of its share and deposit accounts which are subject to withdrawal by the use of negotiable instrument. Said liquidity reserves shall be kept in cash on hand or on deposit subject to check or draft, with any bank or banks or corporate credit union located in the state of Idaho which shall have been approved by the director as liquidity reserve depositories and shall be computed monthly as follows: on the basis of average daily bank or corporate credit union deposits, and average daily cash on hand.

(c) Certificates of deposit issued by the Idaho Corporate Credit Union may be included in meeting the requirements of this section. To the extent a credit union is required to maintain reserves pursuant to the monetary control act of 1980 and the implementing regulations of the board of governors of the federal reserve system, as the same is presently enacted and as it may be amended in the future, the reserves required to be so maintained shall be considered as a part of, and not in addition to, the liquidity reserves required by this section. [I.C., § 26-2128, as added by 1977, ch. 213, § 2, p. 582; am. 1979, ch. 230, § 1, p. 629; am. 1981, ch. 260, § 1, p. 550; am. 1991, ch. 236, § 3, p. 566.]

**Compiler's notes.** Former § 26-2128 was repealed. See Compiler's notes, § 26-2101. 12 U.S.C. §§ 248, 248a, 342, 347b, 355, 360, 412, 461, 463, and 1425a.

The Monetary Control Act of 1980 referred to in subsection (c) of this section is codified as Section 2 of S.L. 1991, ch. 236 is compiled as § 26-2121.

**26-2129. Reserve requirements.** — (a) At the end of each accounting period the gross income shall be determined. From this amount there shall be set aside, as a regular reserve against losses on loans and against such other losses as may be specified in rules prescribed under this chapter, sums in accordance with the following:

(1) A credit union in operation for more than four (4) years and having



assets of five hundred thousand dollars (\$500,000) or more shall set aside: (i) ten per cent (10%) of gross income until the regular reserve plus the allowance for loan loss account shall equal four per cent (4%) of the total of outstanding loans and risk assets, then (ii) five per cent (5%) of gross income until the regular reserve plus the allowance for loan loss account shall equal six per cent (6%) of the total of outstanding loans and risk assets.

(2) A credit union in operation less than four (4) years or having assets of less than five hundred thousand dollars (\$500,000) shall set aside: (i) ten per cent (10%) of gross income until the regular reserve plus the allowance for loan loss account shall equal seven and one-half per cent (7.5%) of the total of outstanding loans and risk assets, then (ii) five per cent (5%) of gross income until the regular reserve plus the allowance for loan loss account shall equal ten per cent (10%) of the total of outstanding loans and risk assets.

(3) Risk assets do not include loans fully secured by member savings and loans guaranteed by an agency of the state or federal government, to the extent of such guarantee.

(4) Whenever the regular reserve plus the allowance for loan loss account falls below the stated per cent of the total outstanding loans and risk assets, it shall be replenished by regular contributions in such amounts as may be needed to maintain the stated reserve goals.

(b) The director, in his discretion, may decrease the reserve requirements set forth in subsection (a) of this section when in his opinion such a decrease is necessary or desirable. The director may also require special reserves to protect the interests of members either by rule if it is to be generally applied, or by order for an individual credit union in a particular case. [I.C., § 26-2129, as added by 1991, ch. 236, § 5, p. 566.]

**Compiler's notes.** Former §§ 26-2129 — 26-2151 which comprised 1972, ch. 67, §§ 2-24, p. 117; 1972, ch. 386, § 1, p. 1118 were repealed by S.L. 1977, ch. 213, § 1.

Former § 26-2129, which comprised I.C.,

§ 26-2129, as added by 1977, ch. 213, § 2, p. 582, was repealed by S.L. 1991, ch. 236, § 4.

Section 6 of S.L. 1991, ch. 236 is compiled as § 26-2140A.

**26-2130. Dividends.** — After allocations to required reserves, the board of directors may at the end of any dividend period duly established, declare a dividend from undivided earnings as the bylaws may provide.

Dividends shall be paid on all fully paid shares outstanding at the close of the dividend period, but shares which become fully paid during the dividend period may be entitled to a proportional part of the dividend as determined by the board of directors.

Dividend credit for a month may be accrued on shares as provided by the board of directors. No dividend shall be paid on shares which are withdrawn during the dividend period.

No dividend shall be declared or paid at a time when the corporation is insolvent, or its net assets are less than its stated capital, or when the payment thereof would render the corporation insolvent or reduce its net



assets below its stated capital. [I.C., § 26-2130, as added by 1977, ch. 213, § 2, p. 582; am. 1979, ch. 123, § 1, p. 382.]

**Compiler's notes.** Former § 26-2130 was repealed. See Compiler's notes, § 26-2129. **Sec. to sec. ref.** This section is referred to in § 26-2123.

**26-2131. Share reduction.** — Whenever the losses of any credit union, resulting from a depreciating in value of its loans or investments or otherwise, exceed its undivided earnings and reserve fund so that the estimated value of its assets is less than the total amount due the shareholders, the credit union may, by a majority vote of the entire membership, order a reduction in the shares of each of its shareholders to divide the loss proportionately among the members. If thereafter the credit union shall realize from such assets a greater amount than was fixed by the order of reduction, such excess shall be divided among the shareholders whose assets were reduced, but only to the extent of such reduction. [I.C., § 26-2131, as added by 1977, ch. 213, § 2, p. 582.]

**Compiler's notes.** Former § 26-2131 was repealed. See Compiler's notes, § 26-2129. **Sec. to sec. ref.** This section is referred to in § 26-2185.

**26-2132. Merger.** — Any credit union may, with the approval of the director, merge with another credit union under the existing charter of such other credit union. The director shall not approve a merger if the effect of the merger would be to provide a broader common bond than allowable under section 26-2110, Idaho Code. The merger may be based upon any plan agreed to by the majority of the board of directors of each credit union joining in the merger, and approved by the affirmative vote of the majority of the members of each such credit union at meetings of the members called for such purpose. Any member not present at the meeting may, within the next twenty (20) days, vote by signing a statement on a form prescribed by the board of directors and such vote shall have as full force and effect as if cast at the meeting. If any such member does not vote within the twenty (20) day period, he shall be deemed to be in favor of the merger. After such agreement by the directors and approval by the members of each credit union, the president and secretary of each credit union shall execute a certificate of merger which shall set forth at least all of the following:

(a) The time and place of the meeting of the board of directors at which the plan was agreed upon.

(b) The vote in favor of adoption of the plan.

(c) A copy of the resolution or other action by which the plan was agreed upon.

(d) The time and place of the meeting of the members at which the plan agreed upon was approved.

(e) The vote by which the plan was approved by the members.

Such certificates and a copy of the plan of the merger shall be forwarded to the director and if approved, a copy of the certificate shall be filed with the county clerk of the county in which each credit union participating in the merger has its principal place of business, and then filed with the director,

whereupon the charter of the merged credit union as a legal entity separate from the surviving credit union shall terminate.

Upon any such merger so affected, all property, property rights, and interests of the merged credit union, shall vest in the surviving credit union without deed, endorsement or other instrument of transfer, and all debts, obligations and liabilities of the merged credit union shall be deemed to have been assumed by the surviving credit union whose charter the merger has affected.

This section shall be construed, when possible, to permit a credit union chartered under the Federal Credit Union Act to merge with one chartered under this chapter, or to permit one chartered under this chapter to merge with one chartered under the Federal Credit Union Act. [I.C., § 26-2132, as added by 1977, ch. 213, § 2, p. 582.]

**Compiler's notes.** Former § 26-2132 was repealed. See Compiler's notes, § 26-2129.

For words "this chapter," see Compiler's notes, § 26-2101.

The Federal Credit Union Act referred to in the last paragraph of this section is compiled as 12 U.S.C., §§ 1751 — 1775.

**26-2133. Reports.** — Credit unions organized under this chapter shall file a year-end post closing financial statement with the director annually on or before the first day of February on forms supplied by the department of finance. A penalty of ten dollars (\$10.00) per day may be collected from each credit union which fails to comply with this section. If such report is not filed with the director of finance within fifteen (15) days of the due date, the director shall give the credit union notice of his intention to suspend or revoke its charter and take possession of the business and property of such credit union, and order its dissolution in accordance with this chapter. Additional reports may be required by the director as he shall deem necessary. If any credit union fails to furnish the office of the director with any such requested special report within thirty (30) days of the date it is requested, he shall give the credit union notice of his intention to suspend or revoke its charter and take possession of the business and property of such credit union, and order its dissolution in accordance with this chapter. [I.C., § 26-2133, as added by 1977, ch. 213, § 2, p. 582.]

**Compiler's notes.** Former § 26-2133 was repealed. See Compiler's notes, § 26-2129.

For words "this chapter," see Compiler's notes, § 26-2101.

**Sec. to sec. ref.** This section is referred to in § 26-2185.

**26-2134. Application fees.** — For the purpose of paying the costs incident to the ascertainment of whether articles of incorporation should be issued, the subscribers to any such articles of incorporation shall pay, at the time of filing their articles of incorporation with the director, a fee as fixed by the director, but not to exceed twenty-five dollars (\$25.00), for the purpose of paying costs incident to the investigation of the application. All such fees shall be deposited with the state treasurer for the credit in the finance administrative account in the state dedicated fund. [I.C., § 26-2134, as added by 1977, ch. 213, § 2, p. 582; am. 1984, ch. 47, § 4, p. 76.]



**Compiler's notes.** Former § 26-2134 was repealed. See Compiler's notes, § 26-2129. Sections 3 and 5 of S.L. 1984, ch. 47 are compiled as §§ 26-1837 (now repealed) and 26-2136, respectively.

**26-2135. Books and records.** — The books and records of a credit union shall be kept in accordance with generally accepted accounting principles and by procedures approved by the director. Every credit union shall keep correct and complete books of accounts, minutes of meetings of members and directors and shall make such books and records and accounts available for examination. The books of account and records shall not be removed from the principal place of business without the consent of the director.

If a credit union utilizes the data processing services of another company the providing of such services by the other corporation shall be subject to the approval of the director and the director shall have the power to require the servicing company to provide such information as the director requires in a form required by the director. Any company providing data processing services for credit unions must agree to provide the director with information for purposes of examination which the director may by rule or regulation require in a form required by the director. [I.C., § 26-2135, as added by 1977, ch. 213, § 2, p. 582.]

**Compiler's notes.** Former § 26-2135 was repealed. See Compiler's notes, § 26-2129. **Sec. to sec. ref.** This section is referred to in § 26-2185.

**26-2136. Examinations and fees.** — The department of finance shall examine each credit union no less often than once in eighteen (18) months, and more frequently whenever the director shall deem it necessary. Each credit union and all of its officers and agents shall be required to give to representatives of said department full access to all books, papers, securities, records and other sources of information under their control; and for the purpose of such examination, said representatives shall have power to subpoena witnesses, administer oaths, compel the giving of testimony, and require the submission of documents.

A report of such examination shall be forwarded to the president of each credit union within thirty (30) days after the completion of the examination. Within thirty (30) days after the receipt of such report, a general meeting of the directors and committeemen shall be called to consider matters contained in the report. A reply to the director shall be forwarded by the board within fifteen (15) days.

On or before February 15 of each calendar year, the director shall fix and collect from each credit union an assessment fee based upon the total assets of the credit union as of December 31 of the previous calendar year, which fees shall not exceed the amounts set forth in the following schedule:

TOTAL ASSETS	FEE
\$50,000 or less .....	\$50.00 /+ \$1.00 per thousand dollars of assets



TOTAL ASSETS	FEE
Over \$50,000 and not over \$100,000 .....	\$100.00 /+ \$.99 per thousand dollars of assets in excess of \$50,000
Over \$100,000 and not over \$250,000 .....	\$149.00 /+ \$.94 per thousand dollars of assets in excess of \$100,000
Over \$250,000 and not over \$1 million .....	\$291.00 /+ \$.89 per thousand dollars of assets in excess of \$250,000
Over \$1 million and not over \$2 million .....	\$958.00 /+ \$.80 per thousand dollars of assets in excess of \$1 million
Over \$2 million and not over \$5 million .....	\$1,758.00 /+ \$.61 per thousand dol- lars of assets in excess of \$2 million
Over \$5 million and not over \$8 million .....	\$3,588.00 /+ \$.48 per thousand dol- lars of assets in excess of \$5 million
Over \$8 million .....	\$5,028.00 /+ \$.35 per thousand dol- lars of assets in excess of \$8 million

The director may in his discretion at any time accept in lieu of any portion of his examinations the findings or result of an audit by a firm of independent certified public accountants or other qualified person or firm approved by the director. The cost of the audit shall be borne by the credit union.

All fees, fines, examination and miscellaneous charges collected by the director pursuant to the Idaho credit union act shall be deposited into the finance administrative account pursuant to section 67-2702, Idaho Code. [I.C., § 26-2136, as added by 1977, ch. 213, § 2, p. 582; am. 1980, ch. 168, § 1, p. 360; am. 1984, ch. 47, § 5, p. 76; am. 1999, ch. 202, § 1, p. 545.]

**Compiler's notes.** Former § 26-2136 was repealed. See Compiler's notes, § 26-2129.  
The Idaho Credit Union Act, referred to herein, is compiled as §§ 26-2101 — 26-2151 and 26-2170 — 26-2188.  
Sections 4 and 6 of S.L. 1984, ch. 47 are

compiled as §§ 26-2134 and 26-2143.  
Section 2 of S.L. 1980, ch. 168 declared an emergency. Approved March 25, 1980.  
**Sec. to sec. ref.** This section is referred to in § 26-2185.

**26-2137. False reports.** — Any person, firm, corporation, or association which maliciously and knowingly spreads false reports about the management or finances of any credit union shall be guilty of a misdemeanor. [I.C., § 26-2137, as added by 1977, ch. 213, § 2, p. 582.]

**Compiler's notes.** Former § 26-2137 was repealed. See Compiler's notes, § 26-2129.

**Sec. to sec. ref.** This section is referred to in § 26-2185.

**26-2138. Taxation.** — A credit union shall be deemed an institution for savings and, together with all the accumulations therein, shall not be subject to taxation except as to real estate owned. The shares of a credit union shall not be subject to a stock transfer tax when issued by the

corporation or when transferred from one (1) member to another. [I.C., § 26-2138, as added by 1977, ch. 213, § 2, p. 582.]

**Compiler's notes.** Former § 26-2138 was repealed. See Compiler's notes, § 26-2129.

**26-2139. Conversion.** — A state chartered credit union may be converted into a federal credit union by complying with the following requirements:

(a) The proposition for such conversion shall first be approved and a date set for a vote thereof by the members, either at a meeting to be held on such date or by a written ballot to be filed on or before such date, by a majority of the board of directors of the state chartered credit union. Written notice of the proposition and of the date set for the vote shall be delivered in person to each member, or mailed to each member at the address for such member appearing on the records of the credit union not more than twenty (20) nor less than five (5) days prior to such date. Approval of the proposition for conversion shall require the majority of those votes cast in person or in writing.

(b) A statement of results of the vote verified by the affidavits of the president or vice-president and the secretary shall be filed with the director within ten (10) days after the vote is taken.

(c) Promptly after the vote is taken and in no event later than ninety (90) days thereafter if the proposition for conversion is approved by such vote, the credit union shall take such action as may be necessary under the federal law to make it a federal credit union, and within ten (10) days after the receipt of the federal charter, notice shall be filed with the director that the charter has been issued.

(d) Upon ceasing to be a state chartered credit union, such credit union shall no longer be subject to any of the provisions of this chapter.

A federally chartered credit union organized under the Federal Credit Union Act may be converted to a state chartered credit union by the following procedure: complying with all state requirements requisite to enabling it to meet proof of solvency and organization as required by this chapter.

When the director has been satisfied that all requirements of this chapter have been complied with, he shall approve the organizational certificate as a state chartered credit union as required by this chapter. [I.C., § 26-2139, as added by 1977, ch. 213, § 2, p. 582.]

**Compiler's notes.** Former § 26-2139 was repealed. See Compiler's notes, § 26-2129. The Federal Credit Union Act referred to in this section is compiled as 12 U.S.C., §§ 1751 — 1775.  
For words "this chapter," see Compiler's notes, § 26-2101.

**26-2140. Cease and desist order.** — Whenever it appears to the director that it is in the public interest, he may order a certificate holder under this chapter to cease and desist from acts, practices and omissions which constitute a violation of this chapter, or would, in the opinion of the

director, constitute an unsafe or unsound practice. [I.C., § 26-2140, as added by 1977, ch. 213, § 2, p. 582.]

**Compiler's notes.** Former § 26-2140 was repealed. See Compiler's notes, § 26-2129.

For words "this chapter" see Compiler's notes, § 26-2101.

**Sec. to sec. ref.** This section is referred to in § 26-2185.

**26-2140A. Conservatorship.** — (a) The director may, in his discretion and without notice, appoint himself or an agent as conservator and immediately take possession and control of the business and assets of any credit union in any case in which:

- (1) The director determines that such action is necessary to conserve the assets of any credit union or to protect the interests of the members of such credit union;
- (2) The credit union, by a resolution of its board of directors, consents to such an action by the director;
- (3) There is a violation of a cease and desist order, or any law, rule, regulation or any written agreement entered into with the director; or
- (4) There is concealment of books, papers, records, or assets of the credit union or refusal to submit books, papers, records, or affairs of the credit union for inspection to any examiner or to any lawful agent of the director.

(b) Not later than thirty (30) calendar days after the date on which the director takes possession and control of the business and assets of a credit union, such credit union may apply to the district court for the judicial district in which the credit union is located for an order requiring the director to show cause why he should not be enjoined from continuing such possession and control. Except as provided in this subsection, no court may take any action, except at the request of the director, to restrain or affect the exercise of powers or functions of the director as conservator.

(c) The director may maintain possession and control of the business and assets of such credit union and may operate such credit union until such time as:

- (1) The director shall permit such credit union to continue business subject to such terms and conditions as may be imposed by the director;
- (2) Such credit union is liquidated in accordance with the provisions of section 26-2141, Idaho Code; or
- (3) Otherwise ordered by the district court of the judicial district in which the credit union is located.

(d) The director may appoint such agents as he considers necessary in order to carry out his duties as conservator.

(e) All expenses of the credit union during the period of the conservatorship shall be paid by the credit union.

(f) The conservator shall have all the powers of the members, the directors, the officers and the committees of the credit union and shall be authorized to operate the credit union in its own name or to conserve its assets in the manner and to the extent authorized by the director.

(g) The authority granted in this section is in addition to all other



authority granted to the director under this chapter. [I.C., § 26-2140A, as added by 1991, ch. 236, § 6, p. 566.]

**Compiler's notes.** Section 5 of S.L. 1991, ch. 236 is compiled as § 26-2129.

**26-2140B. Removal of directors, officers, or employees.** — Any director, officer or employee of any credit union found by the director to be negligent, dishonest, reckless or incompetent in the performance of his official duties, shall be removed from office by the board of directors of such credit union on the written order of the director. If the directors neglect or refuse to remove such director, officer or employee, in the event any losses accrue to such credit union thereafter by reason of the negligence, dishonesty, recklessness or incompetency of such director, officer or employee, the written order of the director shall be deemed to be conclusive evidence of the negligence of the directors failing to act upon the same in any action brought against them, or any of them, for recovery of such losses. The director, officer or employee affected by order of the director may petition the district court in the judicial district in which the credit union is located to set aside the order of the director. Upon the filing of such petition the court shall have the jurisdiction to affirm, set aside, or modify the order of the director. If the directors fail or neglect to remove such director, officer or employee, and the director of the department of finance has reasonable cause to believe that the continued participation in the affairs of the credit union by the director, officer or employee will place the credit union in an unsafe or unsound condition, the director of the department of finance may apply to the district court for a temporary restraining order and injunction preventing the participation of the director, officer or employee in the affairs of the credit union. The findings of the director as to the facts, if supported by substantial evidence, shall be conclusive that the credit union director, officer or employee who is the subject of an order for removal by the director of the department of finance is or has been negligent, dishonest, reckless or incompetent in the performance of his duties. [I.C., § 26-2140B, as added by 1991, ch. 236, § 7, p. 566.]

**26-2141. Suspension.** — If it shall appear that any credit union is bankrupt or insolvent, or that it has wilfully violated any of the provisions of this chapter, its bylaws, rules and regulations of the director, or is operating in an unsafe or unsound manner, the director may issue an order temporarily suspending the credit union's operations. The board shall be given notice by registered or certified mail of such suspension, which notice shall include a list of the reasons for such suspension, and a list of the specific violations of this chapter.

Upon receipt of such suspension notice, the credit union shall immediately cease all operations, except for receipt of loan payments. The directors of the credit union shall then file with the director a reply to the suspension notice, within twenty (20) days, request a hearing to present a plan of

corrective actions proposed if they desire to continue operations, or to request that the credit union be declared insolvent and a liquidating agent appointed. If the credit union fails to answer the suspension notice or request a hearing with the director, said director may then revoke the credit union's charter, appoint a liquidating agent and liquidate the credit union in accordance with this chapter. [I.C., § 26-2141, as added by 1977, ch. 213, § 2, p. 582.]

**Compiler's notes.** Former § 26-2141 was repealed. See Compiler's notes, § 26-2129.

**Sec. to sec. ref.** This section is referred to in § 26-2140A.

**26-2142. Voluntary and/or involuntary liquidation.** — (a) A credit union may elect to dissolve voluntarily and wind up its affairs in the following manner: The board shall adopt a resolution recommending that the credit union be dissolved voluntarily and directing that the question of dissolution be submitted to a regular or special meeting of the members. After the adoption of the resolution to voluntarily dissolve, no receipts shall be accepted nor withdrawals permitted from its share or deposit accounts, nor shall any loans be made nor any dividends declared nor paid pending final determination by its membership on the voluntary dissolution. At a meeting especially called to consider the matter, a majority of the entire membership may vote to dissolve the credit union, provided a copy was mailed to the members of the credit union at least ten (10) days prior thereto. Any member not present at such meeting may, within the next twenty (20) days vote in favor of or may oppose dissolution by signing a statement in form approved by the department of finance and such vote shall have the force and effect as if cast at such meeting. The credit union shall thereupon immediately cease to do business except for the purposes of liquidation, and the president and secretary shall within five (5) days following such meeting notify the department of finance of intention to liquidate and shall include a list of the names of the directors and officers of the credit union together with their addresses.

(b) If the department of finance, after issuing notice of suspension and providing opportunity for a hearing, rejects the credit union's plan to continue operations, the department of finance may issue a notice of involuntary liquidation and appoint a liquidating agent. The credit union may request a stay of execution of such action by appealing to the appropriate court of the jurisdiction in which the credit union is located. Involuntary liquidation may not be ordered prior to following the suspension procedures outlined in this chapter.

(c) The credit union shall continue in existence for the purpose of discharging its debts, collecting and distributing its assets, and doing all acts required in order to wind up its business, and may sue and be sued for the purpose of enforcing such debts and obligations until its affairs are fully adjusted. The board, or in the case of involuntary dissolution, the liquidating agent, shall apply and distribute the assets of the credit union or the proceeds from any disposition of the assets of the credit union in the following sequence:

(1) secured creditors up to the value of their collateral;



- (2) costs and expenses of liquidation, including a surety bond that shall be required;
- (3) wages due the employees of the credit union;
- (4) costs and expenses incurred by creditors in successfully opposing the release of the credit union from certain debts as allowed by the department of finance;
- (5) taxes owed to the United States or any other governmental unit;
- (6) debts owed to the United States;
- (7) general creditors, secured creditors to the extent their claims exceed the value of their collateral and owners of deposit accounts to the extent such accounts are uninsured; and
- (8) members, to the extent of uninsured share accounts and the organization that insured the accounts of the credit union.

As soon as the board or the liquidating agent determines that all assets from which there is a reasonable expectancy of realization have been liquidated and distributed as set forth in this section, the director shall execute a certificate of dissolution. The credit union shall be subject to examination by and reporting to the department of finance to determine that all procedures have been observed as required by this chapter, and shall pay such examination fees as are determined by the department of finance in accordance with its schedules.

(d) If the credit union shall not be completely liquidated and its assets discharged within three (3) years after the special meeting of the members, the director may take possession of the books, records and assets and proceed to complete liquidation. If the director determines after one (1) year from the commencement of liquidation proceedings that the liquidation is not proceeding in a reasonable and expeditious manner under all of the circumstances, he may take possession of the books, records, and assets and appoint a liquidating agent who shall give a bond to complete the liquidation.

(e) Liquidation through the stabilization fund may be utilized after meeting the requirements of this section. The procedure of liquidation shall be as outlined in the practice and procedure policies as adopted by the Idaho credit union league stabilization fund and approved by the director of finance. [I.C., § 26-2142, as added by 1977, ch. 213, § 2, p. 582; am. 1988, ch. 158, § 2, p. 285.]

**Compiler's notes.** Former § 26-2142 was repealed. See Compiler's notes, § 26-2129.

For words "this chapter" see Compiler's notes, § 26-2101.

Sections 1 and 3 of S.L. 1988, ch. 158 are compiled as §§ 26-2115 and 26-2155, respectively.

**26-2143. Branch offices.** — A credit union may under such regulations as the director may adopt establish branch offices at locations other than its main office if the maintenance of such branch offices shall be reasonably necessary to furnish services to its membership. The credit union must justify that ninety per cent (90%) of the cost of the branch and its operation will be derived from existing and potential membership in the proposed



area. No additional branch offices shall be established to serve persons who are not entitled to membership as defined in the common bond provision of the existing field of membership.

Prior written approval of the director shall be necessary for the establishment of branch offices. He shall have the authority to issue notice and hold a hearing to determine if the establishment of the branch office is necessary and in the best interests of the credit union.

The applicant credit union will pay to the department of finance an investigation fee to cover the actual cost of investigation not to exceed five hundred dollars (\$500). These funds will be deposited into the finance administrative account pursuant to section 67-2702, Idaho Code. [I.C., § 26-2143, as added by 1977, ch. 213, § 2, p. 582; am. 1984, ch. 47, § 6, p. 76.]

**Compiler's notes.** Former § 26-2143 was repealed. See Compiler's notes, § 26-2129.

Sections 5 and 7 of S.L. 1984, ch. 47 are compiled as §§ 26-2136 and 26-2225.

**26-2144. Administration, rules and regulations.** — The administration of the provisions of this chapter shall be under the general supervision and control of the director. The director may from time to time make, amend and rescind such rules, regulations and forms necessary to carry out the provisions of this chapter. No rule, regulation or form may be made unless the director finds that the action is necessary or appropriate for the public interest or for the protection of the credit union's welfare consistent with the purposes of this chapter. [I.C., § 26-2144, as added by 1977, ch. 213, § 2, p. 582.]

**Compiler's notes.** Former § 26-2144 was repealed. See Compiler's notes, § 26-2129.

**Sec. to sec. ref.** This section is referred to in § 26-2185.

For words "this chapter," see Compiler's notes, § 26-2101.

**26-2145. Authority to exercise federal powers.** — (a) Notwithstanding any other provision of law, but subject to the limitations provided for in this section, a credit union may engage in any activity in which it could engage, exercise any power it could exercise, or make any loan or investment which it could make if it were operating as a federal credit union, or a credit union chartered by another state.

(b) Before engaging in any activity or exercising any power afforded under this section, a credit union shall first notify the director of its intent to do so. This notice shall be sent to the director by U.S. mail, postage prepaid, certified or registered, with return receipt requested. Should the director take no action on the request within twenty (20) days of delivery to the director, the right to engage in the action or power so requested shall be deemed granted.

(c) Should the director deny the request, the affected credit union shall have the right to request a hearing before the director, which hearing shall be held within thirty (30) days of the date of the denial.

(d) The director shall have the discretion to deny any request which is inconsistent with the purposes of this chapter.

(e) No such approval shall operate to deny the director of any of his authority under this chapter and such permitted activity shall be subject to regulation by the director. [I.C., § 26-2145, as added by 1984, ch. 95, § 2, p. 220; am. 1997, ch. 111, § 3, p. 269.]

**Compiler's notes.** Former § 26-2145 was repealed. See Compiler's notes, § 26-2129.

Another former § 26-2145, which comprised I.C., § 26-2145, as added by 1977, ch. 213, § 2, p. 582, was repealed by S.L. 1984, ch. 95, § 1.

Sections 2 and 4 of S.L. 1997, ch. 111 are compiled as §§ 26-2107 and 26-2152, respectively.

**26-2146. Investment in service corporation.** — No limitation or prohibition otherwise imposed by any provision of the laws of the state of Idaho exclusively relating to credit unions shall prevent or prohibit any two (2) credit unions from investing not more than ten percent (10%) of the paid-in shares and deposits of members of each of them in a credit union service corporation. [I.C., § 26-2146, as added by 1977, ch. 213, § 2, p. 582.]

**Compiler's notes.** Former § 26-2146 was repealed. See Compiler's notes, § 26-2129.

**26-2147. Credit unions jointly holding stock — Effect of withdrawal by one credit union.** — If stock in a credit union service corporation has been held by two (2) credit unions, and one (1) of such credit unions ceases to utilize the services of the corporation and ceases to hold stock in it, and leaves the other as the sole stockholding credit union, the corporation may nevertheless continue to function as such and the other credit union may continue to hold stock in it. [I.C., § 26-2147, as added by 1977, ch. 213, § 2, p. 582.]

**Compiler's notes.** Former § 26-2147 was repealed. See Compiler's notes, § 26-2129.

**Sec. to sec. ref.** This section is referred to in § 26-2108.

**26-2148. Duty of credit union service corporation not to discriminate — Burden of proof.** — Whenever a credit union, referred to in this section as any "applying credit union" subject to examination by either the department of finance of the state of Idaho, or a federal supervisory agency, applies for a type of credit union services for itself from a credit union service corporation which supplies the same type of credit union services to another credit union, and the applying credit union is competitive with any credit union, referred to in this section as a "stockholding credit union" which holds stock in such corporation, the corporation must offer to supply such services by either:

(a) Issuing stock to the applying credit union and furnishing credit union services to it on the same basis as to the other credit unions holding stock in the corporation, or

(b) Furnishing credit union services to the applying credit union at rates no higher than necessary to fairly reflect the cost of such services, including



the reasonable cost of the capital provided to the corporation by its stockholders, at the corporation's option, unless comparable services at competitive overall cost are available to the applying credit union from another source, or unless the furnishing of the services sought by the applying credit union would be beyond the practical capacity of the corporation. In any action or proceeding to enforce the duty imposed by this section, or for damages for the breach thereof, the burden shall be upon the credit union service corporation to show such availability. [I.C., § 26-2148, as added by 1977, ch. 213, § 2, p. 582.]

**Compiler's notes.** Former § 26-2148 was repealed. See Compiler's notes, § 26-2129.

**26-2149. Prohibited activities.** — No credit union service corporation may engage in any revenue producing activity other than the performance of credit union services for credit unions and, to an extent not exceeding one half (½) of its total activity, the performance of similar services for persons or organizations other than credit unions. [I.C., § 26-2149, as added by 1977, ch. 213, § 2, p. 582.]

**Compiler's notes.** Former § 26-2149 was repealed. See Compiler's notes, § 26-2129.

**26-2150. Customer-credit union communication terminal.** — A credit union may make available for use by its customers one (1) or more electronic devices or machines through which the customer may communicate to the credit union a request to withdraw money either from his account or from a previously authorized line of credit, or an instruction to receive or transfer funds for the customer's benefit. The device may receive or dispense cash in accordance with such a request or instruction, subject to verification on line or off line by the credit union. Any transactions initiated through such a device shall be subject to verification by the credit union either by direct wire transmission or otherwise. Such facilities may be unmanned or manned.

A person may perform as would a device so long as the person does not perform any functions not specifically authorized by this section.

These devices shall be designated as a customer-credit union communication terminal (CCUCT). A CCUCT at locations other than the main office or a branch office of the credit union does not constitute a branch. A credit union shall provide insurance protection under its bonding program for transactions involving such devices.

(a) The establishment and use of CCUCT is subject to the following limitations:

(1) Written notice must be given to the director's office no less than thirty (30) days before any CCUCT is put into operation. Any credit union presently utilizing a CCUCT shall comply with the notice requirements within thirty (30) days. Such notice shall describe with regard to the communication system:

1. The location;



2. A general description of the area where located and the manner of installation;
3. The manner of operation;
4. The kinds of functions which will be performed;
5. Whether the CCUCT will be shared, and, if so, under what terms and with what other institutions and their location;
6. The manufacturer and, if owned, the purchase price or, if leased, a copy of the lease;
7. The distance from the nearest credit union office and from the nearest similar CCUCT of the reporting credit union; and
8. The distance from the nearest office and nearest CCUCT of another credit union, which will share the facility, and the name of such other credit union or credit unions.

(2) The functions of the CCUCT shall be limited to:

1. The receiving of deposits;
2. The cashing of checks or drafts;
3. The dispensing of cash;
4. Payment of loan proceeds on a prearranged line of credit;
5. The communication of other such information directly related to the customer's account; and
6. Receiving loan payments.

(3) Arrangements may be made at the CCUCT for the placing or installation of a receptacle in which a customer may place packaged communication intended for the credit union.

(4) The CCUCT shall be a communication service available only to customers of the credit union or other financial institutions which the board of directors of the credit union may approve.

(5) The CCUCT shall not be advertised as a full service branch or as performing anything other than activities set out in subsection (a) (2) of this section.

(b) To the extent consistent with the antitrust laws, credit unions are required to share unmanned CCUCTs at a reasonable fee with one (1) or more other financial institutions if requested by the other financial institution.

(c) The director may issue a cease and desist order upon a finding that a credit union utilizing a CCUCT is doing so in a manner not specifically authorized by this section.

(d) This section shall be deemed to apply to federal credit unions operating customer-credit union communication terminals and for the purpose of this section a financial institution shall mean any state or federally chartered commercial bank, savings and loan association or credit union authorized by the department of finance or a comparable federal agency to do business in the state of Idaho. [I.C., § 26-2150, as added by 1977, ch. 213, § 2, p. 582.]

**26-2151. Credit union as trustee.** — A credit union may act as trustee, and may receive reasonable compensation for so acting, of any trust created or organized in the United States and forming part of a stock bonus, pension, or profit-sharing plan which qualifies or qualified for specific tax treatment under section 401(d), section 403(b), or section 408(a) of the Internal Revenue Code of 1954, as amended, if the funds of such trust are invested only in savings accounts or deposits in such credit union or in obligations or securities issued by such credit union. All funds held in such fiduciary capacity by any such association may be commingled for appropriate purposes of investment, but individual records shall be kept by the fiduciary for each participant and shall show in proper detail all transactions engaged in under the authority of this section. [I.C., § 26-2151, as added by 1977, ch. 213, § 2, p. 582.]

**Compiler's notes.** Former § 26-2151 was repealed. See Compiler's notes, § 26-2129.

The Internal Revenue Code of 1954, §§ 401(d), 403(b) and 408(a) are compiled as

26 U.S.C., §§ 401(d), 403(b) and 408(a).

**Sec. to sec. ref.** This section is referred to in § 26-2110.

**26-2152. Interstate credit unions — Approval — Permit — Fees — Supervision.** — (1) Provided that the membership limits as defined in section 26-2110, Idaho Code, are maintained:

(a) A credit union chartered under this chapter may operate in another state unless prohibited by the law of the other state. Idaho is the home state for any credit union chartered under this chapter.

(b) A credit union chartered under the laws of another state may operate in Idaho with the approval of the director on the terms and conditions provided in subsection (2) of this section. Idaho is the host state for any credit union chartered under the laws of any other state. The state which charts the credit union is the home state of the credit union.

(2) The director may issue a permit to a credit union chartered in another state to operate in this state in a manner consistent with the Idaho credit union act, provided that the credit union applies for such permit on a form approved by the director and has approval from the regulator of credit unions in its home state to operate in Idaho. A credit union for which Idaho is a host state shall acknowledge that Idaho laws relating to consumer protection apply to transactions with residents in Idaho. The credit union for which Idaho is a host state shall maintain its books and records in Idaho or in such other place as the director may agree in writing. The director may, pursuant to chapter 52, title 67, Idaho Code, suspend or revoke the permit of any credit union for which Idaho is the host state for any violation of the Idaho credit union act.

(3) The director shall assess fees as provided in section 26-2136, Idaho Code, to be paid by a credit union for which Idaho is the host state on the basis of the assets of the credit union which are derived from its operations in Idaho. The director, in his discretion, may adjust such fees according to the level of participation of the department in the supervision of the credit union.

(4) The director may enter into agreements with private share insurers and credit union regulators both with the federal government and in other



states, to coordinate and facilitate regulation and supervision of interstate credit unions as permitted by section 26-2610, Idaho Code. [I.C., § 26-2152, as added by 1997, ch. 111, § 4, p. 269.]

**Compiler's notes.** Section 3 of S.L. 1997, ch. 111 is compiled as § 26-2145.

**Sec. to sec. ref.** This section is referred to in § 26-2107.

**26-2153. Share and deposit insurance.** — (1) Not later than January 1, 1986, a state chartered credit union shall apply for and obtain insurance on shares and deposits as provided by the national credit union administration under title II of the federal credit union act (12 U.S.C. section 1781 et seq.), or alternatively, a form of comparable insurance approved by the director. This requirement does not apply to a credit union with debt and equity capital consisting primarily of funds from other credit unions.

(2) A credit union which has been denied a commitment for such insurance shall within thirty (30) days after the denial, commence steps to either liquidate, or merge with an insured credit union, or apply in writing to the director for additional time to obtain an insurance commitment.

The director shall grant one or more extensions of time to obtain the insurance upon satisfactory evidence that the credit union has made or is making a substantial effort to achieve the conditions precedent to issuance of the insurance.

(3) No credit union shall be granted a charter by the director unless such credit union has obtained insurance of its member share and deposit accounts.

(4)(a) Notwithstanding the above, a credit union whose members, after being fully informed on the subject, vote, by a simple majority of those members present at a meeting called for such purpose, to not obtain share insurance, shall not be required to obtain such insurance as condition precedent to doing business in this state.

(b) In those credit unions in which the membership has voted to reject the need for share insurance, the rejection shall be placed before the membership for reconsideration at least biannually thereafter.

(c) Should the membership of a credit union, in which the need for share insurance has been rejected, determine, as provided above, that the need for share insurance does exist, the credit union shall, within thirty (30) days following the date of the meeting held for the purpose of voting on the subject, make application for and obtain insurance as provided above.

(d) Those credit unions whose members have voted to remain uninsured shall disclose to their members, on a regular and periodic basis, that their shares and deposits in that credit union are not protected by share insurance and the procedures required by this section.

(5) The director may make available reports of condition and examination findings to the national credit union administration or to any qualified insuring organization and may accept any report of examination made on behalf of such agency or organizations. The director may appoint an official of the national credit union administration or of any qualified insuring



organization as a liquidating agent of an insured credit union. [I.C., § 26-2153, as added by 1984, ch. 59, § 1, p. 107.]

**Compiler's notes.** Former § 26-2153, which comprised S.L. 1972, ch. 67, § 26, p. 117, was repealed by S.L. 1977, ch. 213, § 1.

The words in parentheses so appeared in the law as enacted.

**26-2154. Credit unions eligible as depositories.** — Notwithstanding any other provision of this chapter, any state credit union or federal credit union located within this state may become a state depository by making application for that purpose to the state treasurer and may accept such funds as nonmember deposits. [I.C., § 26-2154, as added by 1986, ch. 74, § 1, p. 220.]

**Compiler's notes.** Former § 26-2154, which comprised S.L. 1972, ch. 67, § 27, p. 117, was repealed by S.L. 1977, ch. 213, § 1.

**26-2155. Designation of depository — Reporting of reserves and undivided earnings.** — (1) The state treasurer shall designate credit unions qualified under this chapter as a state depository or depositories. Such designation shall be determined by competitive bidding or by other means generally accepted as standard business practice. In no case shall the deposit or deposits of state funds in the account of any public entity in any credit union exceed at any one time, the total of the reserves and undivided earnings of such credit union or the total sum covered by share and deposit insurance provided by either the national credit union share insurance fund or by a deposit guarantee corporation authorized to issue share and deposit insurance contracts in this state, whichever sum shall be less. In the event that any credit union has been designated as a depository under this chapter, such designation shall continue in force until revoked by the treasurer.

(2) Every credit union designated as a state depository and holding any deposit of the funds of the state of Idaho under the provisions of this section shall, on or before beginning to hold such deposits, file with the state treasurer the affidavit of one (1) of its officers showing the amount of the reserves and undivided earnings of such credit union. Such affidavits shall be effective for the purposes of this section, to and including January 31 next following the date of their filing but no longer, and, on or before that date, if such credit union is to continue as a designated state depository under this section, a like affidavit shall be filed in like manner for the succeeding year. No such credit union shall receive deposits from nor act as depository for the funds of the state of Idaho unless and until an affidavit as is herein required and which still continues in effect is on file with the state treasurer in accordance with this section.

(3) The state treasurer is authorized in his or her discretion and from time to time to negotiate for the payment to designated state depositories of reasonable compensation for services rendered in acting as such depositories. The method and/or rate of such compensation and the terms and conditions thereof shall be fixed by the state treasurer after such negotiation, which

may include the calling of bids for specific services. All bids received, whether by a formal bidding process or by negotiation, and the compensation fixed by the treasurer, which shall be in the form of a written agreement, shall be a matter of public record. [I.C., § 26-2155, as added by 1986, ch. 74, § 2, p. 220; am. 1988, ch. 158, § 3, p. 285.]

**Compiler's notes.** Former § 26-2155, which comprised S.L. 1972, ch. 67, § 28, p. 117, was repealed by S.L. 1977, ch. 213, § 1.

Section 3 of S.L. 1986, ch. 74 is compiled as § 50-1013.

Sections 2 and 4 of S.L. 1988, ch. 158 are compiled as §§ 26-2142 and 26-2178, respectively.

## **26-2156. Supervision fees. [Repealed.]**

**Compiler's notes.** This section which comprised 1972, ch. 67, § 29, p. 117 was repealed by S.L. 1977, ch. 213, § 1, approved March 30, 1977, effective July 1, 1977 and amended by S.L. 1977, ch. 70, § 1, approved March 16, 1977, effective July 1, 1977. Since both chapters took effect on July 1, 1977, chapter 213 which was approved subsequent to chapter 70 was considered to be the latest expression of the legislature and thus the section has been set out as repealed by Chapter 213.

The section as amended by Chapter 70 read: "**26-2156. Supervision fees.** — For the purpose of paying the costs incident to the ascertainment of whether an organization certificate should be approved, the subscribers to any such certificate shall pay, at the time of filing their organization certificate, the sum of ten dollars (\$10.00) and on the

approval of any organization certificate, they shall also pay a fee of ten dollars (\$10.00). During December of each calendar year, each state credit union shall pay to the department of finance a fee of ten dollars (\$10.00) for the cost of supervision; provided, however, that no such annual fee shall be payable by such an organization for the fractional part of the first calendar year during which it is formed. All such fees shall be deposited with the state treasurer for the credit of the general account in the state operating fund."

Section 2 of S.L. 1977, ch. 70 read: "Any balance existing in the banking and investment company administration fund account on the effective date [July 1, 1977] of this act shall be transferred to the general account in the state operating fund."

## **26-2157 — 26-2167. Books and records — Examinations — False reports — Taxation — Conversion — Cease and desist order — Suspension — Liquidation — Branch offices — Administration, rules and regulations. [Repealed.]**

**Compiler's notes.** These sections which comprised 1972, ch. 67, §§ 30-39, p. 117; I.C.,

§ 26-2167 as added by 1976, ch. 240, § 1, p. 833 were repealed by S.L. 1977, ch. 213, § 1.

## **26-2168, 26-2169. [Reserved.]**

### **CORPORATE CREDIT UNIONS**

**26-2170. Definition, purpose and restrictions, Idaho corporate credit union.** — (a) The Idaho corporate credit union is a cooperative nonprofit corporate entity which can assist credit unions in meeting their investment and borrowing needs, assist credit unions in the sound management of their liquid assets and serve as a financial intermediary for credit unions.

(b) Any person, corporation, copartnership or association, except a corporate credit union organized under the provisions of this chapter, or the federal credit union act, using a name or title containing the words



“corporate credit union” or any derivation thereof or representing themselves as a corporate credit union shall be fined not more than one thousand dollars (\$1,000), or imprisoned not more than one (1) year or both and may be permanently enjoined from using such words in its name. [I.C., § 26-2170, as added by 1977, ch. 213, § 2, p. 582.]

**Compiler’s notes.** The words “this chapter” and “this act” refer to S.L. 1977, ch. 213, compiled herein as §§ 26-2101 — 26-2151, 26-2170 — 26-2188.

The Federal Credit Union Act referred to in subsection (b) of this section is compiled as 12 U.S.C., §§ 1751 — 1775.

**26-2171. Organization — Idaho corporate credit union.** — Any seven (7) or more credit unions within the state of Idaho, with at least one (1) credit union from each of the seven (7) chapters of the Idaho credit union league, may, through designated delegates appointed by their board of directors, organize the Idaho corporate credit union and become members thereof by:

- (a) Filing an application furnished by the director;
- (b) Executing in duplicate, articles of incorporation by the terms of which they agree to be bound, which articles shall state:
  - (1) The name, which shall include the words “Idaho Corporate Credit Union” and the city in which the proposed credit union is to have its principal place of business;
  - (2) The term of existence of the credit union, which shall be perpetual;
  - (3) The par value of shares of the Idaho corporate credit union, which shall be one hundred dollars (\$100);
  - (4) The names and addresses of the respective credit unions who are subscribers to the articles of incorporation and the number of shares subscribed by each; and
- (c) Adopting bylaws for the general government of the credit union, consistent with provisions of this act and executing the same in duplicate.
- (d) Forwarding the required charter fee, application, articles of incorporation and the bylaws to the director. If they conform to the statute, as determined by the director, he shall issue a certificate of approval to the articles and return a copy of the bylaws and the articles to the applicants or their representative, which shall be preserved in the permanent files of the credit union.

(e) The subscribers for the Idaho corporate credit union shall not transact any business until formal approval of the charter has been received. The director shall cause to be prepared a form of articles of incorporation and a form of bylaws consistent with this act which shall be used by the Idaho corporate credit union incorporators for their guidance. [I.C., § 26-2171, as added by 1977, ch. 213, § 2, p. 582.]

**Compiler’s notes.** For words “this act,” see Compiler’s notes, § 26-2170.



**26-2172. Amendments — Idaho corporate credit union.** — The articles of incorporation or the bylaws may be amended as provided in the bylaws and in accordance with section 26-2106, Idaho Code. [I.C., § 26-2172, as added by 1977, ch. 213, § 2, p. 582.]

**26-2173. Corporate powers — Idaho corporate credit union.** — The Idaho corporate credit union shall have the general rights and powers of any other credit union organized under the Idaho Credit Union Act and shall have the following additional powers:

(a) As authorized by its board of directors or executive committee, to deposit in federally insured state and national banks and deposit with or invest in shares of or loans to United States central credit union to an extent which shall not exceed its shares, and certificates of deposit.

(b) Receive investments from members in the form of shares or corporate deposits. Time deposits of surplus funds shall be evidenced by certificates of deposit having a maturity of not less than ninety (90) days. Surplus funds are those funds which are not needed to meet the member's loan needs or expenses.

(c) To pay and return on shares, share certificates and deposits at such rates as are determined by the board of directors, giving due consideration to the amount and time period of the savings or investment commitment.

(d) To borrow from any source except individuals provided that the total amount shall not exceed fifty percent (50%) of its members' shares, daily interest deposits and certificates of deposit. Provided that with prior written approval of the director of finance, the corporate credit union may exceed the fifty percent (50%) limitation.

(e) To make loans and to participate with the United States central credit union in making loans to members of the corporate credit union upon the terms and conditions determined by the board of directors.

(f) To make deposits in any member credit union in this state and the United States central credit union.

(g) To purchase the fixed assets of a member credit union if the board of directors of the corporate credit union determines it in the best interest of the member credit union.

(h) To develop and enter into agreement for the purpose of participation in any governmental agency liquidity or interlending system among credit unions and for the purpose of aiding credit unions in establishing concentrated lines of credit with other financial institutions, and to act as a depositor and transmitter of funds for the purpose of carrying out this power.

(i) To accept deposits from the United States central credit union in the form of certificates of deposit. [I.C., § 26-2173, as added by 1977, ch. 213, § 2, p. 582.]

**26-2174. Membership in the Idaho corporate credit union.** — Membership in the Idaho corporate credit union shall be limited to and consist of the credit union subscribers to the articles of incorporation, credit unions organized under the Idaho credit union act or the federal credit

union act, and organizations or associations of credit unions who have paid the membership fee, if any, as provided in the bylaws, have subscribed to and paid for one (1) or more shares as provided in the bylaws and have complied with such other requirements as the articles of incorporation or the bylaws may specify. [I.C., § 26-2174, as added by 1977, ch. 213, § 2, p. 582.]

**Compiler's notes.** The Federal Credit Union Act referred to in this section is compiled as 12 U.S.C., §§ 1751 — 1775.

**26-2175. Expulsion and/or withdrawal from the field of membership of the Idaho corporate credit union.** — A member of the Idaho corporate credit union may be expelled by the board of directors, but only after an opportunity has been given to the member to be heard for the purpose of such expulsion. A written notice of this hearing, setting forth the time, place, and date of such meeting shall be forwarded to the member by the board, together with the charges which serve as the basis for the expulsion. The member may be expelled for failure to meet the conditions of its membership, failure to carry out its obligation to the credit union, or refusal to comply with the provisions of the law or bylaws under which the corporate credit union operates or habitual neglect to pay obligations. Upon completion of the hearing, and if the board of directors has voted to expel the member, the member shall remain liable for any sums owed to the Idaho corporate credit union for loans and/or other purposes. The Idaho corporate credit union may require twenty (20) days' written notice to withdraw shares and/or deposits by the member, as funds become available. [I.C., § 26-2175, as added by 1977, ch. 213, § 2, p. 582.]

**26-2176. Meetings and elections of the Idaho corporate credit union.** — Meetings and elections shall be held as indicated in the bylaws. Each member shall have one (1) vote irrespective of shareholdings. No member may vote by proxy, but may vote through a duly authorized delegate appointed by the members of the board of directors or executive committee of each corporate member. [I.C., § 26-2176, as added by 1977, ch. 213, § 2, p. 582.]

**26-2177. Official family — Idaho corporate credit union.** — The business affairs of the corporate credit union shall be managed by a board of at least seven (7) directors. One (1) director shall be elected from the designated delegates of each of the seven (7) credit union chapters of the state, as defined by the Idaho credit union league structure. The board of directors may serve as the supervisory committee or may employ an auditor acceptable to the director and may delegate certain loan functions and preapproved lending limits to the manager of the corporate credit union. [I.C., § 26-2177, as added by 1977, ch. 213, § 2, p. 582.]

**26-2178. Officers — Idaho corporate credit union.** — Within sixty (60) days following the organizational meeting and at each annual meeting,



the directors shall elect from their own number a chairman, one (1) or more vice-chairmen, a treasurer and a secretary, of whom the last two (2) may be the same individual. An assistant treasurer may be appointed by the board of directors. The chairman and secretary shall execute a certificate of election which shall set forth the names and addresses of the officers, directors and members elected or appointed. The certificate of election shall be executed on a form approved by the department of finance and one (1) copy of each shall be filed with the department of finance within ten (10) days after such election or appointment. The terms of the officers shall be for such terms respectively as the bylaws provide, and until their successors are chosen and have been duly qualified. [I.C., § 26-2178, as added by 1977, ch. 213, § 2, p. 582; am. 1988, ch. 158, § 4, p. 285.]

**Compiler's notes.** Section 3 of S.L. 1988, ch. 158 is compiled as § 26-2155.

**26-2179. Board of directors — Idaho corporate credit union. —**

The board of directors of the corporate credit union shall have the same general powers and duties as boards of directors of credit unions organized under the Idaho credit union act and in the corporate credit union bylaws. [I.C., § 26-2179, as added by 1977, ch. 213, § 2, p. 582.]

**Compiler's notes.** The provisions regarding the powers and duties of the boards of directors of credit unions organized under the Idaho Credit Union Act are compiled in § 26-2116.

**26-2180. Loans to member credit unions — Idaho corporate credit union. —** The Idaho corporate credit union may loan to members upon such security and for purposes only as provided in its bylaws. Loans shall be evidenced by a written instrument and within limits set by board policy. No loan shall be made unless approved in writing by a majority of the board of directors or manager as delegated by the board of directors.

The board may establish lines of credit to member credit unions based on the financial statements of the member credit union. Where a line of credit has been approved, application for loans need no further consideration as long as the aggregate obligation does not exceed the limits of such line of credit. The board of directors shall at least once a year review all lines of credit and any lines of credit shall expire if the member becomes more than sixty (60) days delinquent in its obligations to the Idaho corporate credit union. [I.C., § 26-2180, as added by 1977, ch. 213, § 2, p. 582.]

**26-2181. Compensation — Corporate officers. —** The officers of the corporate credit union shall have the same rights regarding compensation as officers of other credit unions organized under the Idaho credit union act. Nothing in this section is to be interpreted to preclude the corporate credit union officers from receiving an honorarium as established annually by the board of directors for each meeting plus their actual expenses. [I.C., § 26-2181, as added by 1977, ch. 213, § 2, p. 582.]



**Compiler's notes.** The provisions regarding compensation of officers of credit unions organized under the Idaho Credit Union Act are compiled in § 26-2122.

**26-2182. Shares and deposits.** — (a) A share is defined as a term applied to each one hundred dollars (\$100) standing to the share account of a member. The shares of a credit union shall all be common shares of one (1) class and shall have a par value of one hundred dollars (\$100) per share. No certificate shall be issued to denote ownership of a share in the credit union.

(b) In the event of default, the Idaho corporate credit union shall have and may exercise a lien on the shares of any member for any sum due the credit union from said member. [I.C., § 26-2182, as added by 1977, ch. 213, § 2, p. 582.]

**26-2183. Reserve allocations — Idaho corporate credit union.** — No reserve shall be required for the corporate credit union except a special reserve may be required by the director of finance when an annual examination reflects need for such reserves for potential losses from investments. Loans one (1) month to six (6) months delinquent shall be required to have a reserve equal to ten percent (10%) of the unpaid balance of such loans. Loans over six (6) months delinquent shall be required to have a reserve equal to one hundred percent (100%) of the unpaid balance of such loans. The director may allow distribution of the special reserve if the losses do not materialize. [I.C., § 26-2183, as added by 1977, ch. 213, § 2, p. 582.]

**26-2184. Dividends — Idaho corporate credit union.** — (a) After allocations to the reserve account if required by the director, the board of directors may at the end of any dividend period duly established, declare a dividend from undivided earnings as the bylaws may provide.

(b) Dividends shall be paid on all fully paid shares outstanding at the close of the dividend periods.

(c) And provided further that the Idaho corporate credit union may pay interest on daily deposit balances of its members which are in excess of the capital share base requirement for membership.

(d) No dividend shall be declared or paid at a time when the corporation is insolvent. [I.C., § 26-2184, as added by 1977, ch. 213, § 2, p. 582.]

**26-2185. Applicable provisions of the Idaho credit union act.** — The following provisions of the Idaho credit union act shall apply to the Idaho corporate credit union:

- (a) Share reduction, section 26-2131, Idaho Code.
- (b) Reports, section 26-2133, Idaho Code.
- (c) Books and records, section 26-2135, Idaho Code.
- (d) Examinations, section 26-2136, Idaho Code.
- (e) False reports, section 26-2137, Idaho Code.
- (f) Cease and desist orders, suspension, and liquidation, section 26-2140, Idaho Code.
- (g) Administration, rules and regulations, section 26-2144, Idaho Code.
- (h) Fiscal year, section 26-2112, Idaho Code.

(i) Penalties for official misconduct, section 26-2117, Idaho Code. [I. C., § 26-2185, as added by 1977, ch. 213, § 2, p. 582.]

**26-2186. Taxation — Idaho corporate credit union.** — The Idaho corporate credit union shall be deemed an institution for savings and, together with all the accumulations therein, shall not be subject to taxation except to real estate owned. The shares of a credit union shall not be subject to a stock transfer tax when issued by the corporation or when transferred from one (1) member to another. [I.C., § 26-2186, as added by 1977, ch. 213, § 2, p. 582.]

**26-2187. Construction against repeal.** — This chapter being a general chapter intended as unified coverage of its subject matter, no part of it shall be deemed to be impliedly repealed by subsequent legislation if such construction can reasonably be avoided. [I.C., § 26-2187, as added by 1977, ch. 213, § 2, p. 582.]

**Compiler's notes.** For words "this chapter," see Compiler's notes, § 26-2170.

**26-2188. Severability.** — If any provision of this chapter or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this chapter which can be given effect without the invalid provisions or application, and to this end the provisions of this chapter are severable. [I.C., § 26-2188, as added by 1977, ch. 213, § 2, p. 582.]

**Compiler's notes.** For words "this chapter," see Compiler's notes, § 26-2170.

## CHAPTER 22

### COLLECTION AGENCIES

#### SECTION.

26-2201 — 26-2220. [Repealed.]  
 26-2221. Short title.  
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 26-2241, 26-2242. [Repealed.]  
 26-2243. Property right in accounts — Practice of law prohibited.  
 26-2244. Cease and desist orders, penalty.  
 26-2245. Director's power to enjoin violations.  
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26-2247. Institution of criminal proceedings.  
26-2248. Administration of act.  
26-2249. Judicial review of final orders of director.

## SECTION.

26-2250. Foreign permittees.  
26-2251. Cancellation of permit.  
26-2252. [Repealed.]

**26-2201 — 26-2220. Formation and operation of collection agencies — Disposition of funds — Agent defined — Practice of law prohibited. [Repealed.]**

**Compiler's notes.** These sections, comprising S.L. 1929, ch. 181, §§ 1-8, p. 319; I.C.A., §§ 53-1101 — 53-1108; am. 1953, ch.

127, §§ 1-9, p. 198; am. 1955, ch. 201, §§ 1, 2, p. 431; am. 1963, ch. 212, §§ 1-14, p. 605, were repealed by S.L. 1970, ch. 53, § 30.

**26-2221. Short title.** — This act shall be known as the "Idaho Collection Agency Act." [I.C., § 26-2221, as added by 1995, ch. 211, § 1, p. 715.]

**Compiler's notes.** Section 2 of S.L. 1995, ch. 211 is compiled as § 26-2223A.

**26-2222. Definitions.** — As used in this chapter:

(1) "Agent" means any person who is compensated on a commission basis or by salary, or both, by any permittee and who either contacts debtors or creditors in connection with the collection agency business of the permittee.

(2) "Business funds" means all moneys belonging to or due the permittee in connection with the operation of a collection agency business.

(3) "Collection agency," "collection bureau" or "collection office" shall be a person who engages in any of the activities enumerated in section 26-2223, Idaho Code.

(4) "Director" means the director of the department of finance.

(5) "Creditor" means any person who transfers to a permittee accounts due and owing for collection purposes.

(6) "Creditors' account" means all funds due and owing a creditor within the definition of this chapter.

(7) "Net collections" means all funds that are due to creditors from the permittee pursuant to the contract between the permittee and creditor, or permittee and debtor without taking into account any offset or funds due from the creditor to the permittee, because of the creditor having collected any part of the account due, plus all funds that the permittee agreed to return to debtors or that were not to be applied to debts.

(8) "Permittee" means a person who has a permit to do business as a collection agency, or debt counselor, or credit counselor in Idaho.

(9) "Person" means any permittee, agent, solicitor, individual, corporation, association, copartnership, trust, company or unincorporated organization.

(10) "Debt counselor" means any person engaged in any of the activities enumerated in subsection (6) of section 26-2223, Idaho Code.

(11) "Credit counselor" means any person engaged in any of the activities enumerated in subsections (6) and (7) of section 26-2223, Idaho Code, which is exempt from federal income taxes as provided in section 501(c) (3) of the internal revenue code. [1970, ch. 53, § 1, p. 118; am. 1974, ch. 24, § 22, p.



592; am. 1987, ch. 295, § 1, p. 630; am. 1990, ch. 346, § 1, p. 930; am. 1997, ch. 370, § 1, p. 1176.]

**Compiler's notes.** The words "this act" refer to S.L. 1970, ch. 53, compiled herein as §§ 26-2222 — 26-2249.

Section 501(c)(3) of the Internal Revenue Code referred to in subdivision (12) of this section is compiled as 26 U.S.C., § 501(c).

Section 21 of S.L. 1974, ch. 24 has been repealed and § 23 is compiled as § 26-2228.

Section 2 of S.L. 1987, ch. 295 is compiled as § 26-2240.

Section 2 of S.L. 1997, ch. 370 is compiled as § 26-2225.

**Sec. to sec. ref.** This chapter is referred to in §§ 28-46-203, 28-49-107, 53-657.

**Cited in:** Dun & Bradstreet, Inc. v. McElDowney, 564 F. Supp. 257 (D. Idaho 1983).

#### **Collection Agency.**

Activities of plaintiff's bookkeeper in sending out statements in plaintiff's name, receiving payments on plaintiff's account, and depositing those payments in accounts maintained exclusively in plaintiff's name did not constitute being a collection agency. Davis v. Professional Bus. Servs., Inc., 109 Idaho 810, 712 P.2d 511 (1985).

**26-2223. Collection agency, debt counselor, or credit counselor permits.** — No person shall without complying with the terms of this act and obtaining a permit from the director:

(1) Operate as a collection agency, collection bureau, collection office, debt counselor, or credit counselor in this state.

(2) Engage, either directly or indirectly in this state in the business of collecting or receiving payment for others of any account, bill, claim or other indebtedness.

(3) Solicit or advertise for the right to collect or receive payment for another of any account, bill, claim or other indebtedness.

(4) Sell or otherwise distribute any system or systems of collection letters and similar printed matter where the name of any person other than the particular creditor to whom the debt is owed appears.

(5) Engage in any activity which indicates, directly or indirectly, that a third party may be involved in effecting any collections.

(6) Engage or offer to engage in the business of receiving money from debtors for application to or payment of or prorating of any creditor or creditors of such debtor.

(7) Engage or offer to engage for compensation in the business of credit counseling.

(8) Engage or offer to engage in the business of credit repair which includes obtaining, for others, improvements in credit records, extensions of credit for clients, or causing the removal of documents from the credit records of a client maintained by a credit reporting agency.

(9) Engage or offer to engage in this state, directly or indirectly, in the business of collecting any form of indebtedness for that person's own account if the indebtedness was acquired from another person and if the indebtedness was either delinquent or in default at the time it was acquired. [1970, ch. 53, § 2, p. 118; am. 1990, ch. 346, § 2, p. 930.]

**Compiler's notes.** The name of the commissioner of finance has been changed to the director of the department of finance on the authority of S.L. 1974, ch. 286, § 1, S.L. 1974,

ch. 40, § 3 (§ 67-2403) and S.L. 1974, ch. 24, § 21 (§ 26-107).

For words "this act" see Compiler's notes, § 26-2222.

Section 3 of S.L. 1990, ch. 346 is compiled as § 26-2231.

**Sec. to sec. ref.** This section is referred to in § 6-2232A.

**Collection Agency.**

Activities of plaintiff's bookkeeper in sending out statements in plaintiff's name, receiv-

ing payments on plaintiff's account, and depositing those payments in accounts maintained exclusively in plaintiff's name did not constitute being a collection agency. *Davis v. Professional Bus. Servs., Inc.*, 109 Idaho 810, 712 P.2d 511 (1985).

DECISIONS UNDER PRIOR LAW

ANALYSIS

Application by nonresident.  
Assignee of mortgage real party in interest.  
Construction of former law.  
Legal processes.

**Application by Nonresident.**

On application by California plaintiff for an Idaho collection agency permit, he being the employee of a California collection agency, the rejection of such application by the commissioner of finance on the ground that plaintiff was not a resident of the state as is required by § 26-2211 (now repealed) was proper, such residence requirement not constituting discrimination between citizens of Idaho and other states and further was a proper regulation under the state police power. *Hankins v. Spaulding*, 78 Idaho 533, 307 P.2d 222 (1957).

**Assignee of Mortgage Real Party in Interest.**

Evidence, in an action to foreclose chattel and real estate mortgages, assigned to plaintiff corporation, was sufficient to support court's finding that plaintiff owned mortgages and secured notes, and hence was a real party in interest entitled to sue, in the absence of sufficient evidence that it was engaged in

collection business and took instruments for collection only. *Allis-Chalmers Mfg. Co. v. Harris*, 56 Idaho 769, 59 P.2d 345 (1936).

**Construction of Former Law.**

Provisions of former collection agency law (C.S., §§ 2360-2367) were mandatory, and assignee for purposes of collection only could not maintain action on assigned instrument without having complied with law. *Goranson v. Brady-McGowan Co.*, 48 Idaho 261, 281 P. 370 (1929).

**Legal Processes.**

This chapter of the code (and the previous enactment of 1915), by authorizing collection of debts by licensed collection agencies, recognized that lawful means for accomplishment thereof may be employed which impliedly includes the right to invoke legal processes afforded by court procedures notwithstanding the provisions of § 18-1003 prohibiting attorneys, public officers or licensed collectors becoming interested in a debt with intent to sue thereon; however, this does not support respondent's argument that appellant could not have owned the debt as a true assignee. *Garren v. Saccomanno*, 86 Idaho 268, 385 P.2d 396 (1963).

**26-2223A. Office to be maintained in state — Designation of responsible person.** — Every permittee under this chapter must maintain an office in the state of Idaho, staffed with at least one (1) natural person who passed the examination required in section 26-2229, Idaho Code, or is exempt from the provisions of this chapter pursuant to section 26-2239(1), Idaho Code, at each branch or facility. Each permittee must have a listed Idaho telephone number and must be open to the public during normal business hours on each business day, provided, however, that the director may in his discretion approve a request for opening at hours other than normal business hours or a portion of a business day. A business day within the meaning of this section does not include Saturdays, Sundays, or legal holidays. Each permittee under this chapter must designate a natural person, who need not be a resident of the state of Idaho, to be responsible for the business carried on at the office and who has passed the examination for a permit required by section 26-2229, Idaho Code. If the person designated by the permittee to be responsible for business carried on at the office is not normally available in the Idaho office, then the permittee's collection



activities with debtors must begin with a written notice to each debtor setting forth a mailing address and a toll-free telephone number whereby a debtor may contact the designated responsible person during normal business hours. [I.C., § 26-2223A, as added by 1974, ch. 154, § 1, p. 1379; am. 1987, ch. 297, § 1, p. 633; am. 1995, ch. 211, § 2, p. 715.]

**Compiler's notes.** Section 1 of S.L. 1995, ch. 211 is compiled as § 26-2221.

### **Constitutionality.**

Since the requirement of this section that permittees maintain an Idaho office applies evenhandedly to each and every collection agency that may be operating in the State of Idaho and, accordingly, the statutory requirements are not per se unconstitutional as constituting an impermissible burden on interstate commerce. *Dun & Bradstreet, Inc. v. McEldowney*, 564 F. Supp. 257 (D. Idaho 1983).

Since the putative benefit of Idaho's regulatory scheme under this section outweighs the incidental consequences incurred by collection agencies, and since regulation of commercial debt collection practices is a sufficiently compelling state interest to meet the balancing test required under the commerce clause when a statute is not per se unconsti-

tutional and, consequently, justifies the state's adopted policy, this section is constitutionally permissible. *Dun & Bradstreet, Inc. v. McEldowney*, 564 F. Supp. 257 (D. Idaho 1983).

The interpretation of this section by the Director of the Department of Finance to require that all communications from a permittee collection agency to Idaho debtors, whether by mail or telephone, must emanate from within Idaho interfered with interstate commerce by restricting the permittee to initiating all communication either by letter or by phone intrastate and thus forbidding the permittee company any interstate communications in soliciting creditors' accounts and such a statutory construction was constitutionally impermissible as a regulation or restriction. *Dun & Bradstreet, Inc. v. McEldowney*, 564 F. Supp. 257 (D. Idaho 1983).

**26-2224. Form of application.** — Every applicant for such permit shall file in the department of finance an application in form to be prescribed by the director setting forth:

(1) The name of the applicant if an individual; if the applicant is a corporation a list of its officers and directors and their addresses. If the applicant is a partnership, then a list of the members of said partnership and their addresses must be filed with the application. Every partnership in its application for a permit shall designate and appoint one (1) or more of its members, and every corporation in its application for a permit shall designate and appoint one (1) or more of its officers or employees who shall submit to the examination hereinafter required. No permit shall be issued to any partnership or corporation unless and until the persons and officers so designated by the partnership or corporation shall submit to and pass the examination required by this act.

(2) The location of the principal office or place of business of the applicant.

(3) Other names, if any, by which the applicant conducts, engages in or solicits business.

(4) The names of all persons and organizations with which the applicant is affiliated in such business, and the location of the principal office or place of business of each such affiliation.

(5) A complete description of the business to be conducted, or plan of operation contemplated, by the applicant in this state.

(6) A list of all papers and filings used by the applicant which must accompany the application and be identified as exhibits by number.



(7) A financial statement showing the applicant to have a financial net worth of not less than two thousand five hundred dollars (\$2,500), which statement shall be subject to disclosure according to chapter 3, title 9, Idaho Code. The financial statement shall specify assets and liabilities, providing detailed reference to each item listed to inform the director of the nature and extent of such assets and liabilities. This financial statement shall be signed by the applicant or its proper agent. The net worth shall not include any notes, accounts, bills, and judgments held for collection by the applicant nor shall it include good will or other assets the value of which is speculative and not susceptible to prompt liquidation.

(8) Such other information concerning the applicant's business as the director may reasonably require. Such application shall be executed and verified by the applicant or applicants personally, or by the president or secretary where the applicant is an association or corporation. [1970, ch. 53, § 3, p. 118; am. 1974, ch. 154, § 2, p. 1379; am. 1990, ch. 213, § 23, p. 930; am. 1995, ch. 211, § 3, p. 715.]

**Compiler's notes.** For words "this act" see Compiler's notes, § 26-2222.

Section 3 of S.L. 1974, ch. 154 is compiled as § 26-2235.

Sections 22 and 24 of S.L. 1990, ch. 213 are compiled as §§ 26-1112 and 28-46-106, respectively.

Section 4 of S.L. 1995, ch. 211 is compiled as § 26-2228.

Section 111 of S.L. 1990, ch. 213 as amended by § 16 of S.L. 1991, ch. 329 read, "Sections 1, 2, 46 and 47 of this act shall be in full force and effect on and after July 1, 1990. All other sections of this act shall be in full force and effect on and after July 1, 1993."

**Sec. to sec. ref.** This section is referred to in § 26-2231.

**26-2225. Information and materials required with application — Examination fee — Consent to service.** — Such application shall be accompanied by:

(1) Complete copies of all literature and circulars issued or circulated by or on behalf of the applicant in soliciting or advertising for business including circular and form letters.

(2) Complete forms of all contracts designed for execution by persons placing any account, bill, claim or other indebtedness in the hands of the applicant for collection.

(3) Complete forms of all contracts and assignments designed for execution by debtors making any assignments to or placing any property with the applicant for the purpose of paying the creditors of such debtors.

(4) Complete forms of all contracts and releases designed for execution by creditors to whom payments are made or are to be made by the applicant.

(5) If the applicant is a corporation or association, a copy of its articles of incorporation or association, duly authenticated.

(6) A list of the names and addresses of all agents who will contact debtors or creditors or solicit business for the applicant in this state.

(7) The names and addresses of all directors and officers, if the applicant is a corporation or association; and the names of the members, if the applicant is an unincorporated company, a firm or copartnership.

(8) An agreement executed by the applicant stipulating that no literature or form of contract not submitted with the application will be issued,

circulated or used by the applicant prior to the filing thereof with the director.

(9) An initial examination fee as fixed by the director, but not to exceed one hundred dollars (\$100), except that no examination fee need be paid by a nonprofit corporation or association conducting credit counseling or debt prorating activities.

(10) Complete copies of all literature, circulars, contracts, and/or other related material to be circulated or distributed by the permit holder to a debtor.

(11) An irrevocable consent to service executed by the applicant appointing the director and his successors in office to be attorney of the applicant to receive service of any lawful process in any civil suit, action, or proceeding against the applicant which arises under this act or any rule or order hereunder. After the consent has been filed, any service hereunder shall have the same force and validity as if personally served on a person filing the consent. A person who has filed such a consent in connection with a previous registration need not file another. Service may be made by leaving a copy of the process in the office of the director. [1970, ch. 53, § 4, p. 118; am. 1984, ch. 47, § 7, p. 76; am. 1997, ch. 370, § 2, p. 1176.]

**Compiler's notes.** The name of the commissioner of finance has been changed to the director of the department of finance on the authority of S.L. 1974, ch. 286, § 1, S.L. 1974, ch. 40, § 3 (§ 67-2403) and S.L. 1974, ch. 24, § 21 (§ 26-107).

For words "this act" see Compiler's notes, § 26-2222.

Sections 6 and 8 of S.L. 1984, ch. 47 are compiled as §§ 26-2143 and 26-2229.

Sections 1 and 3 of S.L. 1997, ch. 370 are compiled as §§ 26-2222 and 26-2229, respectively.

**Sec. to sec. ref.** This section is referred to in § 26-2229.

## **26-2226, 26-2227. Collection agencies board — Members — Meetings. [Repealed.]**

**Compiler's notes.** These sections which comprised S.L. 1970, ch. 53, §§ 5, 6, p. 118, were repealed by S.L. 1974, ch. 24, § 1.

**26-2228. Powers of the director.** — The director shall have the power to provide the manner and method for conducting examinations. Applications for examination shall be filed with the director at least ten (10) days prior to the examination date.

The examination shall be uniformly given, may be written or oral or a combination of both and shall be practical in nature. The examination may include questions on bookkeeping, credit adjusting, business law, collection procedure, business ethics, agency, debtor and creditor relationship, trust funds, creditors' funds, business funds, fiduciary relationships, and the provisions of this act and the rules duly issued by the director pursuant to this act, and such other subject matter as the director by rule may specify. The examination shall be given twice each year or at such more frequent intervals as the director may direct. [1970, ch. 53, § 7, p. 118; am. 1974, ch. 24, § 23, p. 744; am. 1974, ch. 154, § 6, p. 1379; am. 1995, ch. 211, § 4, p. 715.]



**Compiler's notes.** For words "this act" see Compiler's notes, § 26-2222.

Section 22 of S.L. 1974, ch. 24 is compiled as § 26-2222.

Sections 5 and 7 of S.L. 1974, ch. 154 are

compiled as §§ 26-2242 (now repealed) and 26-2232A.

Section 3 of S.L. 1995, ch. 211 is compiled as § 26-2224.

**26-2229. Examination — Permit.** — (1) The director shall examine each application for a permit and accompanying papers and investigate the qualifications of the applicant and if he finds therefrom that the same are in proper form, that the literature proposed to be circulated does not tend to conceal or misrepresent any fact to the detriment of any person dealing with the applicant, that the contract or contracts proposed to be entered into for the collection or payment or prorating of accounts, bills, claims or other indebtedness by the applicant, or prorating or receiving money for payment to creditors are equitable, fair and reasonable, and that the applicant meets all other requirements and qualifications of this act, he shall examine the applicant if an individual, or the designated officer or officers or employees of any corporation and the designated member or members of any partnership, in the manner described in section 26-2225, Idaho Code, and if such applicant or designee passes a satisfactory examination, he shall cause a permit to be issued authorizing the applicant to conduct such a business in this state subject to the provisions of this act, until the fifteenth day of March next thereafter.

(2) If the director finds that the applicant does not qualify under the provisions of this act, the application shall be denied. If he finds the applicant is qualified he must issue a permit upon the filing of the bonds required by this act and the payment of an annual permit fee as fixed by the director, but not to exceed fifty dollars (\$50), except that no permit fee need be paid by a nonprofit corporation or association conducting credit counseling or debt prorating activities.

(3) Contracts between collection agencies and clients shall be in writing. No collection contract shall be deemed equitable, fair or reasonable within the meaning of this section which in substance either:

(a) Permits the applicant to retain any sums due the creditor on any account, bill, claim or other indebtedness collected for him by the applicant on account of, or as a setoff against, any fee, commission, charge, expense or compensation claimed, other than the regular collection fees or commissions, to be due from such creditor on any other account whatever.

(b) Penalizes the creditor for failure to produce evidence in support of any account, bill, claim or item of indebtedness placed with the applicant for collection in addition to that delivered upon the execution of such contract.

(c) Penalizes such creditor for any unintentional error, mistake or omission in furnishing to the applicant the correct name or address of any debtor.

(d) Stipulates, directly or indirectly, for the payment of any fee, commission or compensation in excess of fifty per cent (50%) of the amount actually collected on any account, bill, claim or other indebtedness



entrusted to the applicant for collection, provided, however, that in the case of interest collected by a permittee, the creditor and the permittee by agreement between them may provide for division of such interest between them without such percentage limitation; and provided further that in the case of collection of checks dishonored by nonacceptance or nonpayment the creditor and the permittee by written agreement between them may provide, in place of a percentage fee, for the payment of a set dollar amount collection fee not to exceed the amount provided in section 28-22-105, Idaho Code, which shall not be subject to the fifty per cent (50%) limitation. Collection agreements to proceed under section 1-2301A, Idaho Code, shall be subject to the fifty per cent (50%) limitation.

(4) A permit holder, engaging in the business of receiving money from debtors for application to or payment or prorating the account or accounts of any creditor or creditors of such debtor, for compensation or otherwise, or in the business of acting as the assignee for the benefit of creditors as a primary or secondary object, shall not take or receive for services performed by such permit holder for any one (1) person more than fifteen per cent (15%) of the amount received by it at any one (1) time from or on behalf of that person for payment or prorating to creditors and no other charges shall be made or received for any such service. [1970, ch. 53, § 8, p. 118; am. 1973, ch. 263, § 1, p. 538; am. 1974, ch. 24, § 24, p. 744; am. 1982, ch. 107, § 1, p. 306; am. 1984, ch. 47, § 8, p. 76; am. 1995, ch. 211, § 5, p. 715; am. 1996, ch. 373, § 4, p. 1269; am. 1997, ch. 370, § 3, p. 1176.]

**Compiler's notes.** The name of the commissioner of finance has been changed to the director of the department of finance on the authority of S.L. 1974, ch. 286, § 1, S.L. 1974, ch. 40, § 3 (§ 67-2403) and S.L. 1974, ch. 24, § 21 (§ 26-107).

For words "this act" see Compiler's notes, § 26-2222.

Section 25 of S.L. 1974, ch. 24 is compiled as § 26-2234.

Sections 7 and 9 of S.L. 1984, ch. 47 are compiled as §§ 26-2225 and 26-2231.

Section 3 of S.L. 1973, ch. 263 declared that

this act should be in full force and effect on and after July 1, 1973.

Sections 3 and 5 of S.L. 1996, ch. 373 are compiled as §§ 1-2308 and 28-22-105, respectively.

Section 2 of S.L. 1997, ch. 370 is compiled as § 26-2225.

**Sec. to sec. ref.** This section is referred to in §§ 26-2223A, 26-2250.

**Cited in:** *Dun & Bradstreet, Inc. v. McEldowney*, 564 F. Supp. 257 (D. Idaho 1983).

### **26-2229A. Requirement of fair, open and honest dealing. —**

(1) Every permittee, foreign permittee and agent shall deal openly, fairly, and honestly without deception in the conduct of the collection agency business. When not inconsistent with the statutes of this state, the provisions of the federal fair debt collection practices act, 15 U.S.C. section 1692, et seq., as amended, may be enforced by the director against agents, permittees and foreign permittees under the provisions of this chapter.

(2) In any and every instance where the permittee has a managerial or financial interest in the creditor, or where the creditor has a managerial or financial interest in the permittee, disclosure of such interest must be made on each and every contact with a debtor in seeking to make a collection of any account, claim, or other indebtedness where such interest or relationship exists between creditor and permittee.

(3) No permittee, foreign permittee, or agent shall collect or attempt to collect any interest or other charges, fees, or expenses incidental to the principal obligation unless such interest or incidental fees, charges, or expenses are:

- (a) Expressly authorized by statute;
- (b) Allowed by court rule against the debtor;
- (c) Have been judicially determined; or
- (d) Are provided for in a written form agreement, to be signed by both the debtor and the permittee, and which has the prior approval of the director with respect to the terms of the agreement and amounts of the fees, interest, charges and expenses.

(4) No person shall sell, distribute or make use of collection letters, demand forms or other printed matter which are made similar to or resemble governmental forms or documents, or legal forms used in civil or criminal proceedings.

(5) No person shall use any trade name, address, insignia, picture, emblem or any other means which creates any impression that such person is connected with or is an agency of government. [I.C., § 26-2229A, as added by 1973, ch. 263, § 2, p. 538; am. 1993, ch. 165, § 1, p. 416; am. 1995, ch. 211, § 6, p. 715; am. 1997, ch. 370, § 4, p. 1176.]

**Compiler's notes.** Section 3 of S.L. 263 provided that this act should be in full force and effect on July 1, 1973.

Section 2 of S.L. 1993, ch. 165 is compiled as § 26-2234.

**26-2230. Branch offices.** — (1) The director may authorize a permittee, upon request, to conduct collection activities authorized in this chapter at additional locations. The additional locations shall be considered branches of the permittee. The director shall be informed of the opening and closing of all branch locations operated by permittees.

(2) The director may authorize a permittee, upon written request, to conduct limited collection activities at locations other than the principal location of the permittee or branches. The facilities may be at the domiciles of the agents employed by the permit holder. Collection activities at facilities shall be limited to telecommunications with creditors, clients, debtors, and the permittee's offices and branches. The director shall be informed of the opening and closing of all facility locations operated by permittees. [I.C., § 26-2230, as added by 1995, ch. 211, § 8, p. 715; am. 1997, ch. 370, § 5, p. 1176.]

**Compiler's notes.** Former § 26-2230, which comprised 1970, ch. 53, § 9, p. 118; am. 1981, ch. 103, § 1, p. 156, was repealed by S.L. 1995, ch. 211, § 7, effective July 1, 1995.

Section 9 of S.L. 1995, ch. 211 is compiled as § 26-2233.

Section 6 of S.L. 1997, ch. 370 is compiled as § 26-2233.

**26-2231. Renewal of permit.** — Upon application made prior to the fifteenth day of March of each year, the holder of any permit issued under the provisions of this act shall be entitled to have such permit renewed for the succeeding calendar year upon payment of the annual permit fee as fixed by the director, but not to exceed fifty dollars (\$50.00), compliance with the



bond requirements of this act, the filing of a financial statement in the form required by section 26-2224(7), Idaho Code, showing a net worth of at least two thousand five hundred dollars (\$2,500) for each place of business for which a permit is sought, filing of all other documents required by section 26-2224, Idaho Code, and approval by the director of all literature to be employed by the permittee during the course of the business year, except no annual permit renewal fee need be paid by a nonprofit corporation or association conducting credit counseling or debt prorating activities. [1970, ch. 53, § 10, p. 118; am. 1984, ch. 47, § 9, p. 76; am. 1990, ch. 346, § 3, p. 930.]

**Compiler's notes.** For words "this act" see compiled as §§ 26-2229 and 26-2237.  
Compiler's notes, § 26-2222. Sections 2 and 4 of S.L. 1990, ch. 346 are  
Sections 8 and 10 of S.L. 1984, ch. 47 are compiled as §§ 26-2223 and 26-2232A.

**26-2232. Bonds.** — Upon approval of the application and prior to the issuance of the permit the applicant must file in the department of finance two (2) bonds. Both bonds shall be in a form provided by the attorney general of this state, and shall be executed by the applicant as principal and by some surety company authorized to do business in this state as surety, and shall be for the term of any permit issued to the applicant. Each permittee shall be required to have the two (2) bonds for each permit as hereinafter provided. In lieu of the bonds required by this section, a certificate of deposit issued by an Idaho bank and made payable to the director may be provided to the director in the same principal amount as required for bonds. The interest on the certificate of deposit shall be payable to the permittee. The certificate of deposit shall be maintained at all times during which the permittee is authorized to do business under Idaho law, and must provide that it will remain in effect for at least three (3) years following discontinuance of operations, unless released earlier by the director when all statutory requirements have been met.

(a) A bond shall be executed to the state of Idaho in the sum of fifteen thousand dollars (\$15,000) or upon renewal in such larger sum as herein-after provided. In any case where a permittee or its representatives has failed to account for and pay over the proceeds of any collection made or money received for payment or prorating to creditors, or has failed to return to a debtor any sum received that was not to be applied to his debts, the creditor or debtor shall have in addition to all other legal remedies a right of action in his own name on such bond without the necessity of joining the permittee in such action. The bond shall be continuous in form and shall remain in full force and effect for the permit period. The surety may cancel the bond provided that the surety shall in such event provide the permittee and the director with notice thirty (30) days prior to cancelation of said bond. Such notice shall be by registered or certified mail with request for a return receipt and addressed to the permittee at its main office and to the director. In no event shall the liability of the surety for any and all claims against the bond exceed the face amount of such bond.

Upon renewal of any permit, the permittee shall supply the director with a statement of the preceding year's net collections. The amount of the bond



upon renewal shall be in the amount of fifteen thousand dollars (\$15,000), or two (2) times the average monthly net collections for the preceding year computed to the next highest one thousand dollars (\$1,000), whichever sum is greater, up to a maximum of one hundred thousand dollars (\$100,000).

(b) A bond shall be executed to the state of Idaho in the sum of two thousand dollars (\$2,000), which shall be limited to the indemnification of the department of finance for any and all expenses incurred as a result of investigations, administrative proceedings, and prosecutions which shall be instituted by the director against a permittee or licensee pursuant to this act. The bond shall be continuous in form and remain in full force and effect and run concurrently with the permit period and any renewal thereof. The surety may cancel the bond provided that the surety shall in such event provide the permittee and the director with notice thirty (30) days prior to cancelation of said bond. Such notice shall be registered or certified mail with request for a return receipt and addressed to the permittee at its main office and to the director. In no event shall the liability of the surety for any and all claims against the bond exceed the face amount of such bond. [1970, ch. 53, § 11, p. 118; am. 1987, ch. 296, § 1, p. 632; am. 1987, ch. 301, § 1, p. 639; am. 1999, ch. 277, § 1, p. 691.]

**Compiler's notes.** The name of the commissioner of finance has been changed to the director of the department of finance on the authority of S.L. 1974, ch. 286, § 1, S.L. 1974, ch. 40, § 3 (§ 67-2403) and S.L. 1974, ch. 24, § 21 (§ 26-107).

For words "this act" see Compiler's notes, § 26-2222.

**Sec. to sec. ref.** This section is referred to in § 26-2250.

**26-2232A. Alternate bonding.** — (1) A debt counselor or credit counselor which holds a valid permit under this chapter and is engaged in the activities described in section 26-2223(6) or 26-2223(7), Idaho Code, may, upon approval of the director of the department of finance, supply the director, upon renewal of its permit, in lieu of the bond required in section 26-2232(a), Idaho Code, a bond in the minimum amount of ten thousand dollars (\$10,000) or two (2) times the average monthly net of unremitted funds received from debtors for the preceding year, computed to the next highest one thousand dollars (\$1,000), whichever is greater.

(2) Such bonds shall be subject to the same conditions and requirements as the bond set forth in section 26-2232(a), Idaho Code, and shall be in addition to the bond required by section 26-2232(b), Idaho Code.

(3) Application for approval by the director of the department of finance shall be on a form provided by the director and shall include such information as the director shall require.

(4) A credit counselor applicant shall furnish with the application a certified copy of applicant's determination as an exempt corporation under section 501(c)(3) of the Internal Revenue Code, made by the district director of internal revenue, or in the subsequent renewal of its permit and bond, evidence of continuance of its exempt determination by the district director of internal revenue.

(5) Upon approval by the director of the department of finance of the alternate bond and so long thereafter as the credit counselor or debt

counselor service shall continue operations under the alternate bond herein provided for, it shall furnish to the director of the department of finance, not later than the fifteenth day of March of each year, a statement containing the following information:

(a) The amount of net unremitted funds received from debtors it held on the first day of each calendar month which was collected or received in any prior month or months showing the exact month received and the amount for such month.

(b) The amount of money received during each calendar month from debtors.

(c) The amount of money remitted to creditors or returned to debtors during each calendar month.

(d) The moneys, fees, or commissions retained from the moneys received during each calendar month.

(e) The amount of net unremitted funds due creditors or debtors at the end of each calendar month.

(6) For the purposes of this section[,], money or moneys remitted shall mean money which has actually been conveyed or transferred to the creditor or debtor or his designated agent by physical transfer of cash or by certified or cashier's check or other means so that actual ownership of such funds shall have passed to the creditor or debtor or his agent and no right or interest shall remain in the credit counseling service. A check or bank draft issued but not actually paid, without recourse shall not constitute a remittance.

(7) At any time that the director of the department of finance shall deem that the alternate bond provided for in this section shall be inadequate he may withdraw and cancel approval for the "in lieu" bond and require the bond provided in section 26-2232(a), Idaho Code, or cancel or suspend the permit of the consumer credit counseling service as provided in section 26-2236, Idaho Code. [I.C., § 26-2232A, as added by 1974, ch. 154, § 7, p. 1379; am. 1990, ch. 346, § 4, p. 930.]

**Compiler's notes.** The bracketed comma in subsection (6) of this section was inserted by the compiler.

Section 6 of S.L. 1974, ch. 154 is compiled herein as § 26-2228.

Sections 3 and 5 of S.L. 1990, ch. 346 are compiled as §§ 26-2231 and 26-2235.

Section 8 of S.L. 1974, ch. 154 provided the act should take effect on and after July 2, 1974.

**26-2233. Permittee accounts required.** — A permittee shall in its own name:

(1) Establish and maintain a separate trust account for deposit and remittance of creditors' funds in a financial institution, the deposits of which are insured by the federal deposit insurance corporation.

(2) Establish and maintain a separate business account for the business funds and moneys in a financial institution, the deposits of which are insured by the federal deposit insurance corporation. [1970, ch. 53, § 12, p. 118; am. 1983, ch. 252, § 1, p. 672; am. 1995, ch. 211, § 9, p. 715; am. 1997, ch. 370, § 6, p. 1176.]



**Compiler's notes.** Section 8 of S.L. 1995, ch. 211 is compiled as § 26-2230 and section 10 is compiled as § 26-2250.

Sections 5 and 7 of S.L. 1997, ch. 370 are compiled as §§ 26-2230 and 26-2235, respectively.

**Cited in:** *Dun & Bradstreet, Inc. v. McElowney*, 564 F. Supp. 257 (D. Idaho 1983).

**26-2234. Investigations, records and payment of funds.** — (1) The director or his duly authorized representatives may make an annual examination, or more frequently in the director's discretion, of the place of business of each permittee and foreign permittee and for that purpose the director shall have free access to the offices and places of business, books, creditors' accounts, trust accounts, business accounts, records, papers, files, safes and vaults of all such permittees.

(2) The director may, upon his own motion, and shall, upon the sworn complaint in writing of any person, investigate the action of any person or persons claimed to have violated the provisions of this chapter, and for that purpose the director shall have free access to the offices and places of business, books, creditors' accounts, trust accounts, business accounts, records, papers, files, safes and vaults of all such persons.

(3) Every permittee and foreign permittee shall execute to the director an agreement of consent to examination of any and all bank accounts of the permittee providing the director with authority to make such examination at any time the director, in his discretion, deems it to be in the public interest.

(4) The actual cost of examination for the first annual examination each year and any investigation shall be paid to the director by each permittee so examined or investigated and the director may maintain an action for the recovery of such costs against the permittee or against the surety providing the bond to indemnify the state for such expenditures as required by this chapter.

(5) Each permittee shall acknowledge in writing each account received for collection and shall maintain a record of such account, make a permanent record of all sums collected by him and of all disbursements made by him. Every permittee shall keep and preserve all records relating to accounts received for collection, collections, receipts, and disposal or disbursement of all creditors' funds for a period of five (5) years after the final disposition of any account. It shall be unlawful for any person to intentionally make any false entry, omit to make a necessary entry, mutilate, secrete away, destroy or otherwise dispose of any record mentioned in this subsection, provided a record may be disposed of after the five (5) year period heretofore provided.

(6) Every permittee shall, within thirty (30) days after the close of each calendar month, pay to his creditors the net proceeds of all collections made by the permittee during said calendar month. Each permittee shall report to the creditor all collections made by him and/or any payments made to the creditor within thirty (30) days after the close of each calendar month.

(7) Every permittee shall maintain his books and records in accordance with generally accepted accounting practices subject to such rules and regulations as adopted by the director.



(8) The director, may impound the creditors' accounts, or trust accounts of any permittee if it shall be deemed in the general public interest. [1970, ch. 53, § 13, p. 118; am. 1974, ch. 24, § 25, p. 744; am. 1993, ch. 165, § 2, p. 416.]

**Compiler's notes.** For words "this act" see Section 1 of S.L. 1993, ch. 165 is compiled  
Compiler's notes, § 26-2222. as § 26-2229A.  
Section 24 of S.L. 1974, ch. 24 is compiled  
herein as § 26-2229.

**26-2235. Denial, suspension, revocation of permit.** — (1) An application for a permit may be denied and, after notice and hearing, a permit may be suspended or revoked, by the director if he finds that the holder of or the applicant for, or any member or manager of an applicant or holder, or any officer or manager of an applicant or holder of such permit:

- (a) has violated any provision of this chapter or any rule or order of the director authorized under this chapter; or
- (b) is not legally qualified to do business in this state; or
- (c) has violated any contract or agreement of a type mentioned in this chapter; or
- (d) has failed, refused, neglected, on demand, to pay or remit to any client the agreed portion of any sum collected by the permittee on any bill, claim, account or other indebtedness entrusted to such permittee for collection; or
- (e) has failed to return to a debtor an amount that was not to be paid on his debts; or
- (f) has made a material misstatement in the application for such permit or renewal; or
- (g) has obtained or attempted to obtain a permit or renewal by fraud or misrepresentation; or
- (h) has misappropriated or converted to his own use or illegally withheld moneys collected or held for any other person; or
- (i) has without properly qualifying as herein provided represented himself as a permittee for the purpose of soliciting for or representing any business covered in this chapter; or
- (j) has been convicted of, found guilty of, pled guilty to, or has received a withheld judgment by a court of competent jurisdiction for forgery, embezzlement, fraud, obtaining money under false pretenses, larceny, extortion, conspiracy to defraud or other like offense, any theft offense, a crime involving moral turpitude, or violating any provision of this chapter or is currently disbarred from the practice of law in any state; provided, the director may, in his discretion, issue a permit to any person convicted of any of the above enumerated crimes providing a period of five (5) years has elapsed from the date of his conviction, finding of guilty, plea of guilty, or withheld judgment; or
- (k) has had a permit revoked, canceled, or denied; or
- (l) owes outstanding, unpaid, delinquent and undisputed accounts or judgments.

(2) The director, after notice and hearing, may impose a civil penalty of not more than one thousand dollars (\$1,000) for each violation upon any permittee found to have violated any provision of this chapter.

(3) Permits shall be issued hereunder only to persons who are, and to partnerships, firms, companies, and associations whose members and managers are, and to corporations whose managers are over twenty-one (21) years of age.

(4) The director may, after notice and hearing, impose any sanction authorized by this section on a permit holder if the director finds that an agent of the permit holder has violated any provision of section 26-2229A, Idaho Code.

(5) The director may, in his discretion, and by an order issued in accordance with chapter 52, title 67, Idaho Code, prohibit permit holders from utilizing an individual as an agent if the individual has participated in a violation of this act, or any similar statute of another state. [1970, ch. 53, § 14, p. 118; am. 1974, ch. 24, § 26, p. 744; am. 1974, ch. 154, § 3, p. 1379; am. 1990, ch. 346, § 5, p. 930; am. 1993, ch. 165, § 3, p. 416; am. 1997, ch. 370, § 7, p. 1176.]

**Compiler's notes.** For words "this act" see Compiler's notes, § 26-2222.

Section 27 of S.L. 1974, ch. 24 is compiled as § 26-2237.

Sections 2 and 4 of S.L. 1974, ch. 154 are compiled as §§ 26-2224 and 26-2240.

Sections 4 and 6 of S.L. 1990, ch. 346 are

compiled as §§ 26-2232A and 26-2239.

Sections 6 and 8 of S.L. 1997, ch. 370 are compiled as §§ 26-2233 and 26-2238, respectively.

**Sec. to sec. ref.** This section is referred to in § 26-2250.

**26-2236. Subpoenas.** — The director shall have the power to issue subpoenas and bring before him any person, book, or writing in this state, to swear witnesses and to take the testimony of any person by deposition, with the same fees and mileage and in the same manner as prescribed by law in judicial procedure in district courts of this state in civil cases. Any party to a proposed revocation or suspension of a permit shall have the right of subpoena to compel the attendance of witnesses and produce all books and writing on his behalf. In case any witness shall fail or refuse to comply with a subpoena to appear before the director, the clerk of the district court of the county in which the administrative proceedings are held shall, upon demand of the director, issue a subpoena reciting the demand therefor and summoning the witness to appear and testify at a time and place fixed; and violation of such subpoena or disobedience thereto shall be deemed and punished as a violation of any other subpoena issued from the district court. Any revocation or suspension of any permit or license provided for by this chapter shall be governed by chapter 52, title 67, Idaho Code. [1970, ch. 53, § 15, p. 118; am. 1993, ch. 165, § 4, p. 416.]

**Compiler's notes.** The name of the commissioner of finance has been changed to the director of the department of finance on the authority of S.L. 1974, ch. 286, § 1, S.L. 1974, ch. 40, § 3 (§ 67-2403) and S.L. 1974, ch. 24, § 21 (§ 26-107).

For words "this act" see Compiler's notes, § 26-2222.

Section 5 of S.L. 1993, ch. 165 is compiled as § 26-2239.

**Sec. to sec. ref.** This section is referred to in § 26-2232A.



**26-2237. Fees — Disposition of funds.** — All fees provided for in this chapter shall be paid to the director and by him remitted to the state treasurer pursuant to section 59-1014, Idaho Code, and all such funds shall be deposited to the credit of the finance administrative account in the state dedicated fund. [1970, ch. 53, § 16, p. 118; am. 1974, ch. 24, § 27, p. 744; am. 1984, ch. 47, § 10, p. 76.]

**Compiler's notes.** Sections 26 and 28 of S.L. 1974, ch. 24 are compiled as §§ 26-2235 and 26-2244.

Sections 9 and 11 of S.L. 1984, ch. 47 are compiled as §§ 26-2231 and 26-2240.

**26-2238. Violations — Penalties.** — Any person who shall do business within the state of Idaho as defined in this act, without a permit, or any permit holder who fails to establish and maintain a separate trust account for such creditors' funds for each permit which he holds, or fails to make and keep the records required by this act, shall be guilty of a felony and punishable by a fine not exceeding five thousand dollars (\$5,000) or by imprisonment in the state penitentiary for not more than five (5) years, or both, and any person who shall fail to comply with any of the other provisions of this act shall be guilty of a misdemeanor. [1970, ch. 53, § 17, p. 118; am. 1997, ch. 370, § 8, p. 1176.]

**Compiler's notes.** For words "this act" see Compiler's notes, § 26-2222.  
Section 7 of S.L. 1997, ch. 370 is compiled

as § 26-2235, § 9 contained a repeal and § 10 is compiled as § 26-2240.

**26-2239. Exemptions.** — The provisions of this chapter shall not apply to the following:

- (1) Any attorney-at-law duly authorized to practice in this state;
- (2) Any regulated lender as defined in section 28-41-301(37), Idaho Code, nor any subsidiary, affiliate or agent of such a regulated lender to the extent that the subsidiary, affiliate or agent collects for the regulated lender;
- (3) Any trust company authorized to do business in this state;
- (4) Any federal, state or local governmental agency or instrumentality;
- (5) Any real estate broker or real estate salesman licensed under the laws of and residing within this state when engaged in the regular practice of a real estate business;
- (6) Any abstract and title companies doing an escrow business;
- (7) Any mortgage company to the extent that such mortgage company is engaged in the regular business of a mortgage company as defined in section 26-2802, Idaho Code;
- (8) Any court appointed trustee, receiver or conservator;
- (9) Any telephone corporation, as defined in subsection (10) of section 62-603, Idaho Code, whose initial request for payment on behalf of such telephone corporation or on behalf of another person is made by the telephone corporation as a part of regular telecommunications billings to its customers and at a time before the account, bill, claim or other indebtedness becomes past due or delinquent. [1970, ch. 53, § 18, p. 118; am. 1990, ch. 346, § 6, p. 930; am. 1993, ch. 165, § 5, p. 416.]



**Compiler's notes.** Section 5 of S.L. 1990, ch. 346 is compiled as § 26-2235.  
Sections 4 and 6 of S.L. 1993, ch. 165 are

compiled as §§ 26-2236 and 26-2242 (now repealed), respectively.

**26-2240. Agent identification — Quarterly notice — Fee.** — Each permit holder shall, with its initial application and each annual renewal, file with the director a list of all agents including the name of the agent and any other identifying information the director may require. A fee of twenty dollars (\$20.00) for each listed agent shall accompany the list. The director shall be notified in writing of any additions to the agent list no less often than every calendar quarter. A fee of twenty dollars (\$20.00) shall be filed with the director for each additionally identified agent in the quarterly notification of additions to a permit holder's agent list. An agent is not required to be listed, nor the fee paid therefor, unless the agent acted for the permit holder for more than five (5) business days. [I.C., § 26-2240, as added by 1997, ch. 370, § 10, p. 1176.]

**Compiler's notes.** Former § 26-2240 which comprised 1970, ch. 53, § 19, p. 118; am. 1974, ch. 154, § 4, p. 1379; am. 1984, ch. 47, § 11, p. 76; am. 1987, ch. 295, § 2, p. 630; am. 1990, ch. 346, § 7, p. 930 was repealed by

S.L. 1997, ch. 370, § 9, effective July 1, 1997.

Section 8 of S.L. 1997, ch. 370 is compiled as § 26-2238, § 9 contained repeals and section 11 is compiled as § 26-2250.

**26-2241, 26-2242. Expenses of examination — Payment — Denial, suspension, revocation of license. [Repealed.]**

**Compiler's notes.** These sections which comprised 1970, ch. 53, §§ 20, 21, p. 118; am. 1974, ch. 154, § 5, p. 1379; am. 1990, ch. 346,

§ 8, p. 930; 1993, ch. 165, § 6, p. 416 were repealed by S.L. 1997, ch. 370, § 9, effective July 1, 1997.

**26-2243. Property right in accounts — Practice of law prohibited.** — A permit holder shall have a property right in any account assigned to it for collection; provided, however, no right herein granted shall authorize such permit holder to engage in the practice of law. [1970, ch. 53, § 22, p. 118.]

**26-2244. Cease and desist orders, penalty.** — Whenever it appears to the director that it is in the public interest, he may order any person to cease and desist from acts, practices, or omissions which constitute a violation of this chapter. Whenever, after notice and a hearing, the director finds that any person has violated any provision of this chapter, the director may impose a civil penalty of not more than one thousand dollars (\$1,000) for each violation upon any person found to have violated any provision of this chapter. [1970, ch. 53, § 23, p. 118; am. 1974, ch. 24, § 28, p. 744; am. 1990, ch. 346, § 9, p. 930; am. 1993, ch. 165, § 7, p. 416.]

**Compiler's notes.** Sections 27 and 29 of S.L. 1974, ch. 24 are compiled as §§ 26-2237 and 26-2246.

Section 8 of S.L. 1990, ch. 346 is compiled as § 26-2242 (now repealed).

Sections 6 and 8 of S.L. 1993, ch. 165 are compiled as §§ 26-2242 (now repealed) and 26-2250, respectively.

Section 10 of S.L. 1990, ch. 346 declared an emergency. Approved April 10, 1990.

**26-2245. Director's power to enjoin violations.** — Whenever it appears to the director that any person, or employee or agent thereof, has engaged in or is about to engage in any act or practice or omission constituting a violation of any provision of this act, or any rule or order hereunder, he may in his discretion bring an action in any court of competent jurisdiction to enjoin any such acts or practices and to enforce compliance with this act or any rules hereunder. Upon a showing that a person, or employee or agent of any person, has engaged in or is about to engage in an act or practice constituting a violation of this act or any rule hereunder, a permanent or temporary injunction, or restraining order shall be granted and a receiver or conservator may be appointed for the defendant's assets. The director shall not be required to furnish bond. [1970, ch. 53, § 24, p. 118.]

**Compiler's notes.** The name of the commissioner of finance has been changed to the director of the department of finance on the authority of S.L. 1974, ch. 286, § 1, S.L. 1974,

ch. 40, § 3 (§ 67-2403) and S.L. 1974, ch. 24, § 21 (§ 26-107).

For words "this act" see Compiler's notes, § 26-2222.

**26-2246. Discontinuance of operations — Requirements.** —

(1) Before discontinuance of operations as a collection agency under the terms of this act, every permittee shall furnish the director with proof in a form to be determined by the director that:

- (a) Proper remittance has been made to all creditors or claimants of money collected.
- (b) All accounts have been returned to the creditors and certification to that effect has been provided to the director.
- (c) All valuable papers and assignments of judgment given to the permittee by the creditor [creditors] in connection with claims have been returned to the creditor [creditors].
- (d) All judgments obtained by the collection agency against debtors, in the agency's name, have been returned and assigned to the creditors.

(2) Any permittee discontinuing doing business as a collection agency shall maintain the bonds required of such permittee to conduct a collection agency business until a final accounting has been made to the director and approved by him. [1970, ch. 53, § 25, p. 118; am. 1974, ch. 24, § 29, p. 744.]

**Compiler's notes.** For words "this act" see Compiler's notes, § 26-2222.

The bracketed words "creditors" in subsection (1)(c) of this section were inserted by the compiler.

Sections 28 and 30 of S.L. 1974, ch. 24 are

compiled as §§ 26-2244 and 27-411, respectively.

Section 91 of S.L. 1974, ch. 24 provided the act should take effect on and after July 1, 1974.

**26-2247. Institution of criminal proceedings.** — The director may refer such evidence as may be available concerning violations of this act or of any rule or order hereunder to the attorney general or the proper prosecuting attorney, either of whom may in his discretion, with or without such a reference, institute appropriate criminal proceedings under this act. [1970, ch. 53, § 26, p. 118.]



**Compiler's notes.** The name of the commissioner of finance has been changed to the director of the department of finance on the authority of S.L. 1974, ch. 286, § 1, S.L. 1974,

ch. 40, § 3 (§ 67-2403) and S.L. 1974, ch. 24 § 21 (§ 26-107).

For words "this act" see Compiler's notes, § 26-2222.

**26-2248. Administration of act.** — The administration of the provisions of this act shall be under the general supervision and control of the director, subject to chapter 52, title 67, Idaho Code. The director may from time to time make, amend, and rescind such rules, regulations and forms necessary to carry out the provisions of this act. No rule, regulation or form may be made unless the director finds that the action is necessary or appropriate for the public interest or for the protection of creditors and debtors consistent with the purpose of this act. [1970, ch. 53, § 27, p. 118.]

**Compiler's notes.** The name of the commissioner of finance has been changed to the director of the department of finance on the authority of S.L. 1974, ch. 286, § 1, S.L. 1974,

ch. 40, § 3 (§ 67-2403) and S.L. 1974, ch. 24 § 21 (§ 26-107).

For words "this act" see Compiler's notes, § 26-2222.

**26-2249. Judicial review of final orders of director.** — Any person aggrieved by a final order of the director may obtain judicial review of that order pursuant to the provisions of chapter 52, title 67, Idaho Code. [1970, ch. 53, § 28, p. 118; am. 1993, ch. 216, § 12, p. 587.]

**Compiler's notes.** The name of the commissioner of finance has been changed to the director of the department of finance on the authority of S.L. 1974, ch. 286, § 1, S.L. 1974, ch. 40, § 3 (§ 67-2403) and S.L. 1974, ch. 24, § 21 (§ 26-107).

Section 29 of S.L. 1970, ch. 53 read: "All effective permits and licenses issued under prior law relating to doing business as a collection agency or soliciting for a collection agency shall remain in effect as long as they would have remained in effect had they been issued under this act."

Section 30 of S.L. 1970, ch. 53 repealed former chapter 22 of title 26.

Section 31 of S.L. 1970, ch. 53 read: "If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable."

Section 32 of S.L. 1970, ch. 53 provided that this act should be in full force and effect on and after July 1, 1970.

Sections 11 and 13 of S.L. 1993, ch. 216 are compiled as §§ 26-1809 and 26-2805, respectively.

**26-2250. Foreign permittees.** — (1) Notwithstanding any other provision of this chapter, if a permittee meets the conditions of subsection (2) of this section, it shall be exempt, as a foreign permittee, from the requirements that it maintain an agent or office in this state.

(2) To be a foreign permittee, a collection agency must:

(a) Be qualified to do business in the state of Idaho;

(b) Be the holder of a valid permit or license to do business as a collection agency in the state where it has its principal place of business, or holds a license in another state if the state where its principal place of business is located does not require licenses to operate collection agencies;

(c) Certify in its application for a permit and each annual renewal that it will not solicit any creditor client which has its principal place of business in this state;



- (d) Maintain a bond substantially similar, as determined by the director, to the bond required by subsection (b) of section 26-2232, Idaho Code;
- (e) Maintain no agent or place of business in this state;
- (f) Conduct its business in this state exclusively by mail or telecommunications; and
- (g) Maintain its books and records in accordance with generally accepted accounting practices. The director or his duly authorized representatives may make an annual examination, or more frequent in the director's discretion, of the principal place of business of a foreign permittee outside the state of Idaho, and for that purpose the director shall have free access to the offices and places of business, books, creditors' accounts, trust accounts, business accounts, records, papers, files, safes and vaults of all such permittees. The actual cost of examination for the first annual examination each year and any investigation shall be paid to the director by each permittee so examined or investigated. The director may maintain an action for the recovery of such costs against the foreign permittee.

(3) The director shall examine each application for a foreign permit hereunder in the manner provided in section 26-2229, Idaho Code, and if the applicant is found to be qualified under the provisions of this chapter, shall cause a permit to be issued authorizing the applicant to conduct a business in this state as a foreign permittee. An applicant who has been issued a foreign permit pursuant to this chapter shall be known as a "foreign permittee." If the director finds that the applicant does not qualify under the provisions of this chapter, the application shall be denied.

(4) The failure of a permittee to comply with the provisions of this section shall constitute grounds for denial, revocation or suspension of a foreign permit pursuant to section 26-2235, Idaho Code. [1976, ch. 345, § 1, p. 1150; am. 1993, ch. 165, § 8, p. 416; am. 1995, ch. 211, § 10, p. 715; am. 1997, ch. 370, § 11, p. 1176.]

**Compiler's notes.** Section 7 of S.L. 1993, ch. 165 is compiled as § 26-2244.

Section 9 of S.L. 1995, ch. 211 is compiled as § 26-2233.

Section 10 of S.L. 1997, ch. 370 is compiled as § 26-2240.

**26-2251. Cancellation of permit.** — Any permittee or foreign permittee failing to apply in a timely manner for renewal of a permit shall have said permit cancelled on the day following the last day for renewal applications to be filed. Engaging in collection agency business with a cancelled permit shall be a violation of the provisions of this chapter. To restore a cancelled permit the fee shall be two hundred dollars (\$200). A cancelled permit may be restored only before the expiration of six (6) months following the date of annual renewal. [I.C., § 26-2251, as added by 1993, ch. 165, § 10, p. 416.]

**Compiler's notes.** Former § 26-2251, which comprised 1976, ch. 345, § 2, p. 1150,

was repealed by S.L. 1993, ch. 165, § 9, effective July 1, 1993.

**26-2252. Agents in state. [Repealed.]**

**Compiler's notes.** Former § 26-2252, which comprised 1976, ch. 345, § 3, p. 1150, was repealed by S.L. 1993, ch. 165, § 9, effective July 1, 1993.

**CHAPTER 23****BANK SERVICE CORPORATIONS****SECTION.**

26-2301 — 26-2306. [Repealed.]

**26-2301 — 26-2306. Bank service corporations — Definitions — Investment limitations — Duties and prohibited activities. [Repealed.]**

**Compiler's notes.** This chapter which comprised S.L. 1963, ch. 62, §§ 1-6, p. 243, was repealed by S.L. 1979, ch. 41, § 1. For present law, see §§ 26-401 — 26-405.

**CHAPTER 24****INDUSTRIAL DEVELOPMENT CORPORATIONS****SECTION.**

26-2401. Definitions.  
 26-2402. Who may incorporate.  
 26-2403. Powers of the corporation.  
 26-2404. Right to purchase or transfer capital stock or obligations of corporation.  
 26-2405. Application for membership — Loans.  
 26-2406. Duration of membership.  
 26-2407. Powers of stockholders and members.  
 26-2408. Amendment to articles of incorporation.

**SECTION.**

26-2409. Business of corporation managed by board of directors.  
 26-2410. Earned surplus.  
 26-2411. Deposits in banks.  
 26-2412. Annual financial examination.  
 26-2413. Meetings.  
 26-2414. Duration of corporation.  
 26-2415. Dissolution.  
 26-2416. Credit of state not pledged.  
 26-2417. Corporation deemed a state development company.  
 26-2418. Fiscal year.

**26-2401. Definitions.** — As used in this act, the following words and phrases, unless differently defined or described, shall have the meanings and references as follows:

(1) "Corporation" means an Idaho industrial development corporation created under this act.

(2) "Financial institution" means any banking corporation or trust company, savings and loan association, insurance company or related corporation, partnership, foundation, or other institution engaged primarily in lending or investing funds.

(3) "Member" means any financial institution authorized to do business within this state which shall undertake to lend money to a corporation created under this act, upon its call, and in accordance with the provisions of this act.

(4) "Board of directors" means the board of directors of the corporation created under this act.

(5) "Loan limit" means for any member, the maximum amount permitted to be outstanding at one (1) time on loans made by such member to the

corporation, as determined under the provisions of this act. [1963, ch. 273, § 1, p. 695; I.C., § 30-1501 (1963 Supp.).]

**Compiler's notes.** For words "this act" refer to S.L. 1963, ch. 273 which is compiled herein as §§ 26-2401 — 26-2418. **Sec. to sec. ref.** This section is referred to in § 26-2409.

**26-2402. Who may incorporate.** — Ten (10) or more persons, a majority of whom shall be residents of this state, who may desire to create an industrial development corporation under the provisions of this act, for the purpose of promoting, developing and advancing the prosperity and economic welfare of the state and, to that end, to exercise the powers and privileges hereinafter provided, may be incorporated by filing in the office of the secretary of state, as hereinafter provided, articles of incorporation. The articles of incorporation shall contain:

(1) The name of the corporation, which shall include the words "Industrial Development Corporation of Idaho."

(2) The location of the principal office of the corporation, but such corporation may have offices in such other places within the state as may be fixed by the board of directors.

(3) The purposes for which the corporation is founded, which shall be to promote, stimulate, develop and advance the business prosperity and economic welfare of Idaho and its citizens; to encourage and assist through loans, investments or other business transactions in the location of new business and industry in this state and to rehabilitate and assist existing business and industry; to stimulate and assist in the expansion of all kinds of business activity which will tend to promote the business development and maintain the economic stability of this state, provide maximum opportunities for employment, encourage thrift, and improve the standard of living of the citizens of this state; similarly, to cooperate and act in conjunction with other organizations, public or private, in the promotion and advancement of industrial, commercial, agricultural and recreational developments in this state; and to provide financing for the promotion, development, and conduct of all kinds of business activity in this state.

(4) The names and post-office addresses of the members of the first board of directors, who, unless otherwise provided by the articles of incorporation or the bylaws, shall hold office for the first year of existence of the corporation or until their successors are elected and have qualified.

(5) Any provision which the incorporators may choose to insert for the regulation of the business and for the conduct of the affairs of the corporation and any provision creating, dividing, limiting and regulating the powers of the corporation, the directors, stockholders or any class of the stockholders, including, but not limited to a list of the officers, and provisions governing the issuance of stock certificates to replace lost or destroyed certificates.

(6) The amount of authorized capital stock and the number of shares into which it is divided, the par value of each share and the amount of capital with which it will commence business and, if there is more than one (1) class of stock, a description of the different classes; the names and post-office



addresses of the subscribers of stock and the number of shares subscribed by each. The aggregate of the subscription shall be the minimum amount of capital with which the corporation shall commence business which shall not be less than thirty thousand dollars (\$30,000). The articles of incorporation may also contain any provision consistent with the laws of this state for the regulation of the affairs of the corporation.

(7) The articles of incorporation shall be in writing, subscribed by not less than five (5) natural persons competent to contract and acknowledged by each of the subscribers before an officer authorized to take acknowledgments and filed in the office of the secretary of state for approval. A duplicate copy so subscribed and acknowledged may also be filed.

(8) The articles of incorporation shall recite that the corporation is organized under the provisions of this act.

The secretary of state shall not approve articles of incorporation for a corporation organized under this act until a total of at least five (5) national banks, state banks, savings banks, industrial savings banks, federal savings and loan associations, domestic building and loan associations, or insurance companies authorized to do business within this state, or any combination thereof, have agreed in writing to become members of said corporation; and said written agreement shall be filed with the secretary of state with the articles of incorporation and the filing of same shall be a condition precedent to the approval of the articles of incorporation by the secretary of state. Whenever the articles of incorporation shall have been filed in the office of the secretary of state and approved by him and all taxes, fees and charges, have been paid, as required by law, the subscribers, their successors and assigns shall constitute a corporation, and said corporation shall then be authorized to commence business, and stock thereof to the extent herein or hereafter duly authorized may from time to time be issued. [1963, ch. 273, § 2, p. 695; I.C., § 30-1502 (1963 Supp.); am. 1965, ch. 74, § 1, p. 117.]

**Compiler's notes.** For words "this act" see compiler's notes, § 26-2401.

Section 2 of S.L. 1965, ch. 74 is compiled as § 26-2407.

**26-2403. Powers of the corporation.** — In furtherance of its purposes and in addition to the powers now or hereafter conferred on business corporations by the provisions of chapter 1, title 30, Idaho Code, the corporation shall, subject to the restrictions and limitations herein contained, have the following powers:

(1) To elect, appoint and employ officers, agents and employees; to make contracts and incur liabilities for any of the purposes of the corporation; provided, that the corporation shall not incur any secondary liability by way of guaranty or indorsement of the obligations of any person, firm, corporation, joint stock company, association or trust, or in any other manner.

(2) To borrow money from its members and the small business administration and any other similar or successor federal agency, or any of the purposes of the corporation; to issue therefor its bonds, debentures, notes or other evidences of indebtedness, whether secured or unsecured, and to secure the same by mortgage, pledge, deed of trust or other lien on its property, franchises, rights and privileges of every kind and nature or any

part thereof or interest therein, without securing stockholder or member approval; provided, that no loan to the corporation shall be secured in any manner unless all outstanding loans to the corporation shall be secured equally and ratably in proportion to the unpaid balance of such loans and in the same manner.

(3) To make loans to any person, firm, corporation, joint-stock company, association or trust, and to establish and regulate the terms and conditions with respect to any such loans and the charges for interest and service connected therewith; provided, however, that the corporation shall not approve any application for a loan unless and until the person applying for said loan shall show that he has applied for the loan through ordinary banking channels and that the loan has been refused by at least one (1) bank or other financial institution.

(4) To purchase, receive, hold, lease, or otherwise acquire, and to sell, convey, transfer, lease or otherwise dispose of real and personal property, together with such rights and privileges as may be incidental and appurtenant thereto and the use thereof, including, but not restricted to, any real or personal property acquired by the corporation from time to time in the satisfaction of debts or enforcement of obligations.

(5) To acquire the goodwill, business, rights, real and personal property, and other assets, or any part thereof, or interest therein, of any persons, firms, corporations, joint-stock companies, associations or trusts, and to assume, undertake, or pay the obligations, debts and liabilities of any such person, firm, corporation, joint-stock company, association or trust; to acquire improved or unimproved real estate for the purpose of constructing industrial plants or other business establishments thereon or for the purpose of disposing of such real estate to others for the construction of industrial plants or other business establishments; and to acquire, construct or reconstruct, alter, repair, maintain, operate, sell, convey, transfer, lease, or otherwise dispose of industrial plants or business establishments.

(6) To acquire, subscribe for, own, hold, sell, assign, transfer, mortgage, pledge or otherwise dispose of the stock, shares, bonds, debentures, notes or other securities and evidences of interest in, or indebtedness of, any person, firm, corporation, joint-stock company, association or trust, and while the owner or holder thereof to exercise all the rights, powers and privileges of ownership, including the right to vote thereon.

(7) To mortgage, pledge, or otherwise encumber any property, right or things of value, acquired pursuant to the powers contained in subsections (4), (5), or (6), as security for the payment of any part of the purchase price thereof.

(8) To cooperate with and avail itself of the facilities of the United States department of commerce, the Idaho division of tourism and industrial development, and any other similar or successor state or federal governmental agencies; and to cooperate with and assist, and otherwise encourage organizations in the various communities of the state in the promotion, assistance and development of the business prosperity and economic welfare of such communities or of this state or of any part thereof.



(9) To do all acts and things necessary or convenient to carry out the powers expressly granted in this act. [1963, ch. 273, § 3, p. 695; I.C., § 30-1503 (1963 Supp.).]

**Compiler's notes.** The name of the department of commerce and development has been changed to the division of tourism and industrial development on the authority of

S.L. 1974, ch. 22, § 3 (§ 67-4701).

For words "this act" see Compiler's notes, § 26-2401.

**26-2404. Right to purchase or transfer capital stock or obligations of corporation.** — Notwithstanding any rule at common law or any provision of any general or special law or any provision in their respective charters, agreements of association, articles of organization or trust indentures:

(1) Any person, including all domestic corporations organized for the purpose of carrying on business within this state and further including without implied limitation, public utility companies and insurance companies, and foreign corporations licensed to do business within this state, and all financial institutions as defined herein, and all trusts, are hereby authorized to acquire, purchase, hold, sell, assign, transfer, mortgage, pledge or otherwise dispose of any bonds, securities or other evidences of indebtedness created by, or the shares of the capital stock of, the corporation, and while owners of said stock to exercise all the rights, powers and privileges of ownership, including the right to vote thereon, all without the approval of any regulatory authority of the state except as otherwise provided in this act; provided, however, that a financial institution which does not become a member of the corporation shall not be permitted to acquire any shares of the capital stock of the corporation;

(2) All financial institutions are hereby authorized to become members of the corporation and to make loans to the corporation as provided herein and;

(3) Each financial institution which becomes a member of the corporation is hereby authorized to acquire, purchase, hold, sell, assign, transfer, mortgage, pledge or otherwise dispose of, any bonds, securities or other evidences of indebtedness created by, or the shares of the capital stock of the corporation, and while owners of said stock to exercise all the rights, powers and privileges of ownership, including the right to vote thereon, all without the approval of any regulatory authority of the state; provided, that the amount of the capital stock of the corporation which may be acquired by any member pursuant to the authority granted herein shall not exceed ten percent (10%) of the loan limit of such member.

The amount of capital stock of the corporation which any member is authorized to acquire pursuant to the authority granted herein is in addition to the amount of capital stock in corporations which such member may otherwise be authorized to acquire. [1963, ch. 273, § 4, p. 695; I.C., § 30-1504 (1963 Supp.).]

**Compiler's notes.** For words "this act" see Compiler's notes, § 26-2401.

**26-2405. Application for membership — Loans.** — Any financial institution may request membership in the corporation by making application to the board of directors on such form and in such manner as said board of directors may require, and membership shall become effective upon acceptance of such application by said board.

Each member of the corporation shall make loans to the corporation as and when called upon by it to do so on such terms and other conditions as shall be approved from time to time by the board of directors, subject to the following conditions:

(1) All loan limits shall be established at the thousand dollar (\$1,000) amount nearest to the amount computed in accordance with the provisions of this section.

(2) No loan to the corporation shall be made if immediately thereafter the total amount of the obligations of the corporation would exceed ten (10) times the amount then paid in on the outstanding capital stock of the corporation.

(3) The total amount outstanding on loans to the corporation made by any member at any time, when added to the amount of the investment in the capital stock of the corporation then held by such member, shall not exceed:

(a) Twenty percent (20%) of the total amount then outstanding on loans to the corporation by all members, including in said total amount outstanding, amounts validly called for loan but not yet loaned.

(b) The following limit, to be determined as of the time such member becomes a member on the basis of the audited balance sheet of such member at the close of its fiscal year immediately preceding its application for membership, or in the case of an insurance company, its last annual statement to the director of the department of insurance; two and one-half percent (2½%) of the capital and surplus of commercial banks and trust companies; one half of one per cent (½%) of the total outstanding loans made by savings and loan associations, and building and loan associations; two and one-half percent (2½%) of the capital and unassigned surplus of stock insurance companies, except fire insurance companies, two and one-half percent (2½%) of the unassigned surplus of mutual insurance companies, except fire insurance companies; one tenth of one percent (⅒%) of the assets of fire insurance companies; and such limits as may be approved by the board of directors of the corporation for other financial institutions.

(4) Subject to paragraph (a) of subsection (3) of this section, each call made by the corporation shall be prorated among the members of the corporation in substantially the same proportion that the adjusted loan limit of each member bears to the aggregate of the adjusted loan limits of all members. The adjusted loan limit of a member shall be the amount of such member's loan limit, reduced by the balance of outstanding loans made by such member to the corporation and the investment in capital stock of the corporation held by such member at the time of such call.

(5) All loans to the corporation by members shall be evidenced by bonds, debentures, notes, or other evidences of indebtedness of the corporation, which shall be freely transferable at all times, and which shall bear interest



at a rate of not less than one quarter of one percent ( $\frac{1}{4}\%$ ) in excess of the rate of interest determined by the board of directors to be the prime rate prevailing at the date of issuance thereof on unsecured commercial loans. [1963, ch. 273, § 5, p. 695; I.C., § 30-1505 (1963 Supp.).]

**Compiler's notes.** The name of the state insurance commissioner has been changed to the director of the department of insurance on the authority of S.L. 1974, ch. 11, § 3 (§ 41-203).

**Sec. to sec. ref.** This section is referred to in § 26-2407.

**26-2406. Duration of membership.** — Membership in the corporation shall be for the duration of the corporation; provided, that upon written notice given to the corporation five (5) years in advance, a member may withdraw from membership in the corporation at the expiration date of such notice.

A member shall not be obligated to make any loans to the corporation pursuant to calls made subsequent to notice of the intended withdrawal of said member. [1963, ch. 273, § 6, p. 695; I.C., § 30-1506 (1963 Supp.).]

**26-2407. Powers of stockholders and members.** — The stockholders of the corporation shall have the power to determine the number of and elect directors as provided in section 26-2409.

The stockholders and the members of the corporation shall have the following powers of the corporation:

- (1) To make, amend and repeal bylaws;
- (2) To amend the articles of incorporation as provided in section 26-2408;
- (3) To dissolve the corporation as provided in section 26-2415;
- (4) To do all things necessary or desirable to secure aid, assistance loans and other financing from any financial institutions, and from any agency established under the Small Business Investment Act of 1958, and amendments thereto or other similar federal laws now or hereafter enacted.
- (5) To exercise such other of the powers of the corporation consistent with this act as may be conferred on the stockholders and the members by the bylaws.

As to all matters requiring action by the stockholders and the members of the corporation, said stockholders and said members shall vote separately thereon by classes, and, except as otherwise herein provided, such matters shall require the affirmative vote of a majority of the votes to which the stockholders present or represented at the meeting shall be entitled and the affirmative vote of a majority of the votes to which the member present or represented at the meeting shall be entitled.

Each stockholder shall have one (1) vote, in person or by proxy for each share of capital stock held by him, and each member shall have one (1) vote, in person or by proxy, except that any member having a loan limit of more than one thousand dollars (\$1,000) shall have one (1) additional vote, in person or by proxy, for each additional one thousand dollars (\$1,000) which such member is authorized to have outstanding on loans to the corporation at any one (1) time as determined under paragraph (b) of subsection (3) of

section 26-2405. [1963, ch. 273, § 7, p. 695; I.C., § 30-1507 (1963 Supp.); am. 1965, ch. 74, § 2, p. 117.]

**Compiler's notes.** For words "this act" see Compiler's notes, § 26-2401.

The Small Business Investment Act of 1958, referred to in this section is Act of August 21, 1958, P.L. 85-699, 72 Stat. 689,

found in 15 U.S.C. §§ 661 — 696.

Sections 1 and 3 of S.L. 1965, ch. 74 are compiled herein as §§ 26-2402 and 26-2409, respectively.

**26-2408. Amendment to articles of incorporation.** — The articles of incorporation may be amended by the votes of the stockholders and the members of the corporation, voting separately by classes, and such amendments shall require approval by the affirmative vote of two thirds ( $\frac{2}{3}$ ) of the votes to which the stockholders shall be entitled and two thirds ( $\frac{2}{3}$ ) of the votes to which the members shall be entitled; provided, that no amendment of the articles of incorporation which is inconsistent with the general purposes expressed herein or which authorizes any additional class of capital stock to be issued, or which eliminates or curtails the right of the director of the department of finance to examine the corporation or the obligation of the corporation to make reports as provided in section 26-2412, shall be made; and provided, further, that no amendment of the articles of incorporation which increases the obligation of a member to make loans to the corporation, or makes any change in the principal amount, interest rate, maturity date, or in the security or credit position of outstanding loan of a member to the corporation, or affects a member's right to withdraw from membership as provided herein, or affects a member's voting rights as provided herein, shall be made without the consent of each member affected by such amendment.

Within thirty (30) days after any meeting at which an amendment of the articles of incorporation has been adopted, articles of amendment signed and sworn to by the president, treasurer, and a majority of the directors, setting forth such amendment and due adoption thereof, shall be submitted to the secretary of state, which [who] shall examine them and if he finds that they conform to the requirements of this act, shall so certify and indorse his approval thereon. Thereupon, the articles of amendment shall be filed in the office of the secretary of state and no such amendment shall take effect until such articles of amendment shall have been filed as aforesaid. [1963, ch. 273, § 8, p. 695; I.C., § 30-1508 (1963 Supp.).]

**Compiler's notes.** The name of the commissioner of finance has been changed to the director of the department of finance on the authority of S.L. 1974, ch. 286, § 1, S.L. 1974, ch. 40, § 3 (§ 67-2403) and S.L. 1974, ch. 24, § 21 (§ 26-107).

For words "this act" see Compiler's notes, § 26-2401.

The bracketed word "who" in the second paragraph was inserted by the compiler.

**26-2409. Business of corporation managed by board of directors.** — The business and affairs of the corporation shall be managed and conducted by a board of directors, a president, a vice-president, a secretary, a treasurer, and such other officers and such agents as the corporation by its bylaws shall authorize. The board of directors shall consist of such number,



not less than eleven (11) nor more than twenty-one (21), at least two thirds ( $\frac{2}{3}$ ) of which directors shall be officers or employees of members, as defined in section 26-2401, Idaho Code, as shall be determined in the first instance by the incorporators and thereafter annually by the stockholders of the corporation. The board of directors may exercise all the powers of the corporation except such as are conferred by law or by the bylaws of the corporation upon the stockholders or members and shall choose and appoint all the agents and officers of the corporation and fill all vacancies except vacancies in the office of director which shall be filled as hereinafter provided. The board of directors shall be elected in the first instance by the incorporators and thereafter at the annual meeting, which annual meeting shall be held during the month of January, or, if no annual meeting shall be held in the year of incorporation, then within ninety (90) days after the approval of the articles of incorporation at a special meeting as hereinafter provided. The directors shall hold office until the next annual meeting of the corporation or special meeting held in lieu of the annual meeting after the election and until their successors are elected and qualified unless sooner removed in accordance with the provisions of the bylaws. Any vacancy in the office of a director shall be filled by the directors.

Directors and officers shall not be responsible for losses unless the same shall have been occasioned by the wilful misconduct of such directors and officers. [1963, ch. 273, § 9, p. 695; I.C., § 30-1509 (1963 Supp.); am. 1965, ch. 74, § 3, p. 117.]

**Compiler's notes.** Section 2 of S.L. 1965, ch. 74 is compiled as § 26-2407.

gency. Approved March 2, 1965.

Section 4 of S.L. 1965 declared an emer-

**Sec. to sec. ref.** This section is referred to in § 26-2407.

**26-2410. Earned surplus.** — Each year the corporation shall set apart as earned surplus not less than ten percent (10%) of its net earnings for the preceding fiscal year until such surplus shall be equal in value to one half ( $\frac{1}{2}$ ) of the amount paid in on capital stock then outstanding. Whenever the amount of surplus established herein shall become impaired, it shall be built up again to the required amount in the manner provided for its original accumulation. Net earnings and surplus shall be determined by the board of directors, after providing for such reserves as said directors deem desirable, and the determination of the directors made in good faith shall be conclusive on all persons. [1963, ch. 273, § 10, p. 695; I.C., § 30-1510 (1963 Supp.).]

**26-2411. Deposits in banks.** — The corporation shall not deposit any of its funds in any banking institution unless such institution has been designated as a depository by a vote of a majority of the directors present at an authorized meeting of the board of directors, exclusive of any director who is an officer or director of the depository so designated. The corporation shall not receive money on deposit. [1963, ch. 273, § 11, p. 695; I.C., § 30-1511 (1963 Supp.).]

**26-2412. Annual financial examination.** — The corporation shall be examined at least once annually by the director of the department of finance and shall make reports of its condition not less than annually to said director of the department of finance and more frequently upon call of the director of the department of finance, who in turn shall make copies of such reports available to the director of the department of insurance and the governor; and the corporation shall also furnish such other information as may from time to time be required by the director of the department of finance and secretary of state. The corporation shall pay the actual cost of said examinations. The director of the department of finance shall exercise the same power and authority over corporations organized under this act as is now exercised over banks and trust companies by the provisions of title 26, Idaho Code, where the provision[s] of title 26, Idaho Code, are not in conflict with this act. [1963, ch. 273, § 12, p. 695; I.C., § 30-1512 (1963 Supp.).]

**Compiler's notes.** The name of the commissioner of finance has been changed to the director of the department of finance on the authority of S.L. 1974, ch. 286, § 1, S.L. 1974, ch. 40, § 3 (§ 67-2403) and S.L. 1974, ch. 24, § 21 (§ 26-107).

The name of the state commissioner of insurance has been changed to the director of

the department of insurance on the authority of S.L. 1974, ch. 11, § 3 (§ 41-203).

For words "this act" see Compiler's notes, § 26-2401.

The bracketed letter "s" was inserted by the compiler.

**Sec. to sec. ref.** This section is referred to in § 26-2408.

**26-2413. Meetings.** — The first meeting of the corporation shall be called by a notice signed by three (3) or more of the incorporators, stating the time, place and purpose of the meeting, a copy of which notice shall be mailed, or delivered, to each incorporator at least five (5) days before the day appointed for the meeting. Said first meeting may be held without such notice upon agreement in writing to that effect signed by all the incorporators. There shall be recorded in the minutes of the meeting a copy of said notice or of such unanimous agreement of the incorporators.

At such first meeting, the incorporators shall organize by the choice, by ballot, of a temporary clerk; by the adoption of bylaws; by the election by ballot of directors; and by action upon such other matters within the powers of the corporation as the incorporators may see fit. The temporary clerk shall be sworn and shall make and attest a record of the proceedings. Ten (10) of the incorporators shall be a quorum for the transaction of business. [1963, ch. 273, § 13, p. 695; I.C., § 30-1513 (1963 Supp.).]

**26-2414. Duration of corporation.** — Unless otherwise provided in the articles of incorporation, the period of duration of the corporation shall be perpetual, subject, however, to the right of the stockholders and the members to dissolve the corporation prior to the expiration of said period as provided in section 26-2415. [1963, ch. 273, § 14, p. 695; I.C., § 30-1514 (1963 Supp.).]



**26-2415. Dissolution.** — The corporation may upon the affirmative vote of two-thirds ( $\frac{2}{3}$ ) of the votes to which the stockholders shall be entitled and two-thirds ( $\frac{2}{3}$ ) of the votes to which the members shall be entitled dissolve said corporation as provided by sections 30-1-82 through 30-1-93, Idaho Code, insofar as those sections are not in conflict with the provisions of this act. Upon any dissolution of the corporation, none of the corporation's assets shall be distributed to the stockholders until all sums due the members of the corporation as creditors thereof have been paid in full. [1963, ch. 273, § 15, p. 695; I.C., § 30-1515 (1963 Supp.); am. 1980, ch. 197, § 25, p. 433.]

**Compiler's notes.** For words "this act" see Compiler's notes, § 26-2401.

Sections 30-1-82 through 30-1-93, referred to in this section, have been repealed. For present law see Parallel Reference Table following Chapter 30-1.

Sections 24 and 26 of S.L. 1980, ch. 197 are compiled as §§ 16-1506 and 31-1434, respectively.

Section 34 of S.L. 1980, ch. 197 read: "(1) Section 1 and sections 3 through 33 of this act shall be in full force and effect on and after July 1, 1980.

"(2) Section 2 of this act shall be in full force and effect on and after July 1, 1981."

**Sec. to sec. ref.** This section is referred to in § 26-2407.

**26-2416. Credit of state not pledged.** — Under no circumstances shall the credit of the state of Idaho be pledged to any corporation organized under the provisions of this act. [1963, ch. 273, § 16, p. 695.]

**Compiler's notes.** For words "this act" see Compiler's notes, § 26-2401.

**26-2417. Corporation deemed a state development company.** — Any corporation organized under the provisions of this act shall be a state development company, as defined in the Small Business Investment Act of 1958, and amendments thereto, or any other similar federal legislation, and shall be authorized to operate on a statewide basis. [1963, ch. 273, § 17, p. 695; I.C., § 30-1517 (1963 Supp.).]

**Compiler's notes.** For words "this act" see Compiler's notes, § 26-2401.

For citation of Small Business Investment Act of 1958, see note to § 26-2407.

**26-2418. Fiscal year.** — Corporations organized under this act shall adopt the calendar year as their fiscal year. [1963, ch. 273, § 18, p. 695; I.C., § 30-1518 (1963 Supp.).]

**Compiler's notes.** For words "this act" see Compiler's notes, § 26-2401.

Section 19 of S.L. 1963, ch. 273 read: "The provisions of this act are severable, and if any of its provisions shall be held unconstitutional by any court of competent jurisdiction, the

decision of such court shall not affect or impair any of the remaining provisions which can be given effect without the part or parts adjudged to be unconstitutional or invalid."

Section 20 of S.L. 1963, ch. 273 declared an emergency. Approved March 27, 1963.

## CHAPTER 25

## LOAN BROKERS

## SECTION.

26-2501. Definition.

26-2502. Exceptions.

26-2503. Fees prohibited until a loan is made.

## SECTION.

26-2504. Fees recoverable.

26-2505. Actions for monetary relief.

26-2506. Criminal penalty.

**26-2501. Definition.** — “Loan broker” means any person, corporation, partnership or other business entity which offers for compensation, in this state, to arrange for a loan or other extension of credit. [I.C., § 26-2501, as added by 1979, ch. 298, § 1, p. 780.]

**Cited in:** Salazar v. Tilley, 110 Idaho 584, 716 P.2d 1356 (Ct. App. 1986).

**26-2502. Exceptions.** — This chapter shall not apply to:

(a) Any person doing business under any law of this state or of the United States relating to banks, credit unions, trust companies, savings and loan associations, insurers, pension trusts, real estate investment trusts and other financial institutions, or under the Idaho credit code;

(b) Any corporation, association, syndicate, joint stock company, or partnership engaged exclusively in the business of marketing agricultural, horticultural, viticultural, dairy, livestock, poultry, or bee products on a cooperative nonprofit basis in loaning or advancing money to the members thereof or in connection with any such business;

(c) Any corporation securing money or credit from any federal intermediate credit bank organized and existing pursuant to the provisions of an act of congress entitled “Agricultural Credits Act of 1923,” in loaning or advancing money or credit so secured;

(d) Any person who is a F.H.A. (Federal Housing Administration) approved mortgagor;

(e) Loans made by a broker-dealer licensed under the Idaho securities act if the loan is made in accordance with applicable provisions of the Idaho securities act, the securities act of 1933, the securities exchange act of 1934 and regulation T of the federal reserve board, code of federal regulations, part 220 of title 12; or

(f) Fees and charges authorized by laws of this state or the laws of the United States if the maximum charge and the manner of collecting the charge are set out in the law or in regulations adopted under the law.

(g) Any person licensed as a mortgage broker or mortgage banker pursuant to chapter 31, title 26, Idaho Code. [I.C., § 26-2502, as added by 1979, ch. 298, § 1, p. 780; am. 1996, ch. 324, § 2, p. 1100; am. 1998, ch. 337, § 4, p. 1082.]

**Compiler’s notes.** The “Agricultural Credits Act of 1923”, referred to in subsection (c) of this section is compiled as 12 U.S.C., §§ 1151, 1161 — 1163, 1171, 1172, 1181, 1182, 1191, 1201, 1202, 1211 — 1223, 1231 — 1249, 1251,

1261, 1271, 1281 — 1283, 1291 — 1293, 1301 — 1303, 1311 — 1318, 1321, and 1322.

The “Securities Act of 1933” referred to in subsection (e) of this section is compiled as 15 U.S.C., §§ 77a — 77aa.



The "Securities Exchange Act of 1934" referred to in subsection (e) of this section is found in 15 U.S.C., §§ 77b — 77e, 77j, 77k, 77m, 77o, 77s, 78a — 78o, 78o-3, and 78p — 78hh.

Section 1 of S.L. 1996, ch. 324 is compiled as §§ 26-3101 — 26-3116.

Section 3 of S.L. 1998, ch. 337 is compiled as § 26-1206.

**Cross ref.** Idaho Securities Act, §§ 30-1401 — 30-1458.

**Cited in:** Salazar v. Tilley, 110 Idaho 584, 716 P.2d 1356 (Ct. App. 1986).

**26-2503. Fees prohibited until a loan is made.** — No loan broker shall directly or indirectly receive any fee, interest or other charge of any nature until a loan or extension of credit is made or a written commitment to loan or extend credit is made by any person exempt under section 26-2502, Idaho Code. [I.C., § 26-2503, as added by 1979, ch. 298, § 1, p. 780; am. 1992, ch. 28, § 1, p. 89.]

**Cited in:** Salazar v. Tilley, 110 Idaho 584, 716 P.2d 1356 (Ct. App. 1986).

**26-2504. Fees recoverable.** — A person damaged as a result of a violation of the provisions of this chapter may recover from the loan broker the amount of the fee thus paid, plus damages in the amount of twice the fee. [I.C., § 26-2504, as added by 1979, ch. 298, § 1, p. 780; am. 1992, ch. 28, § 2, p. 89.]

**Cited in:** Houghland Farms, Inc. v. Johnson, 119 Idaho 72, 803 P.2d 978 (1990).

**26-2505. Actions for monetary relief.** — The receiving of any fee, interest or other charge in violation of this chapter shall also be deemed an unfair and deceptive practice in violation of the Idaho Consumer Protection Act; provided however, no person aggrieved by a violation of this chapter can recover or attempt to recover monetary relief under both this chapter and the Idaho Consumer Protection Act, but rather such person must elect whether to file an action pursuant to this chapter or the Idaho Consumer Protection Act. [I.C., § 26-2505, as added by 1979, ch. 298, § 1, p. 780; am. 1992, ch. 28, § 3, p. 89.]

**Compiler's notes.** Section 2 of S.L. 1979, ch. 298 declared an emergency. Approved March 30, 1979.

**Cross ref.** Consumer Protection Act, §§ 48-601 — 48-619.

**26-2506. Criminal penalty.** — Any person who wilfully violates any provision of chapter 25, title 26, Idaho Code, shall be guilty of a felony. [I.C., § 26-2506, as added by 1981, ch. 239, § 1, p. 482.]

## CHAPTER 26

### IDAHO INTERSTATE BANKING ACT

#### SECTION.

26-2601. Short title.

26-2602. Statement of purpose.

26-2603. Definitions.

26-2604. Prohibited acquisition.

#### SECTION.

26-2605. Acquisition by out-of-state company.

26-2606. Requirements for acquisition.

26-2607. Acquisition of failing institution.

## SECTION.

26-2608. Conditions for approval.  
 26-2609. Penalties..  
 26-2610. Cooperative agreements.  
 26-2611. No repeal by implication.

## SECTION.

26-2612. Severability.  
 26-2613. Banks as "issuing public corporations."

**26-2601. Short title.** — This chapter shall be known as the "Idaho Interstate Banking Act." [I.C., § 26-2601, as added by 1985, ch. 185, § 1, p. 474; am. 1995, ch. 99, § 12, p. 299.]

**Compiler's notes.** Section 11 of S.L. 1995, ch. 99 amended the chapter heading for Chapter 26, Title 26.

**Sec. to sec. ref.** This chapter is referred to

in §§ 26-1111 and 26-1404, 26-3204.

Sections 26-2601 — 26-2612 are referred to in § 26-107.

**26-2602. Statement of purpose.** — It is the policy of the state of Idaho to allow acquisitions of Idaho financial institutions by out-of-state financial institution holding companies under the terms and conditions set forth in this chapter. [I.C., § 26-2602, as added by 1985, ch. 185, § 1, p. 474; am. 1995, ch. 99, § 13, p. 299.]

**26-2603. Definitions.** — As used in this chapter:

(1) "Applicant" means an out-of-state financial institution holding company which has submitted an application under section 26-2605, Idaho Code.

(2) "Control." A person has "control" of a financial institution or financial institution holding company if the person:

(a) Directly or indirectly, owns, controls or has the power to vote twenty-five percent (25%) or more of any class of voting securities of the financial institution or financial institution holding company;

(b) The person, directly or indirectly, controls the election of a majority of the directors or trustees of the financial institution or financial institution holding company; or

(c) The person, directly or indirectly, directs or exercises a controlling influence over the management or policies of the financial institution or financial institution holding company.

There is a rebuttable presumption that a person has control of a financial institution or financial institution holding company if the person owns, controls or has the power to vote five percent (5%) or more of the voting securities of the financial institution or financial institution holding company. Owning voting securities in a fiduciary capacity does not constitute "control" unless the director determines, after notice and an opportunity for hearing, that the person exercises a controlling influence over the management or policies of the financial institution or financial institution holding company. No person shall be deemed to have control of a financial institution or financial institution holding company by virtue of the person's ownership or control of shares acquired by him in connection with his underwriting of shares in the financial institution or financial institution holding company which are held only for such period of time as will permit the sale thereof on an orderly and reasonable basis, and no person shall be deemed to have



control of a financial institution or financial institution holding company by virtue of his ownership or control of shares acquired and held in the ordinary course of securing or collecting a debt previously contracted in good faith and which is held only for such period of time as will permit the sale thereof on an orderly and reasonable basis, which period of time shall have a duration of no more than two (2) years.

(3) "Director" means the director of the department of finance.

(4) "Financial institution" means any state bank, national bank, trust company, savings and loan association, savings bank, federal savings and loan association, federal savings bank, or credit union, as those terms are defined in title 26, Idaho Code, or any federal credit union organized under the federal credit union act (12 U.S.C. section 1751, et seq.). The term also includes any other institution which holds and receives deposits, savings or share accounts; issues certificates of deposit; or provides to its customers any deposit accounts which are subject to withdrawal by check, instrument, order or electronic means to effect third-party payments.

(5) "Financial institution holding company" means a person, other than an individual, that has or acquires control over any financial institution.

(6) "Idaho financial institution" means:

(a) A financial institution chartered by or incorporated in the state of Idaho;

(b) With respect to financial institutions chartered by the federal government, those which have their main office located in Idaho.

(7) "Idaho financial institution holding company" means a financial institution holding company whose principal place of business is, and whose operations are principally conducted in, this state. "Idaho financial institution holding company" also means an out-of-state financial institution holding company which lawfully has control of an Idaho financial institution on the effective date of this chapter.

(8) "In danger of failing" means a financial institution is in danger of failing if: (i) the financial institution is not likely to be able to meet the demands of its depositors or pay its obligations in the normal course and there is no reasonable prospect for it to do so without federal or other governmental assistance; or (ii) the financial institution has incurred or is likely to incur losses that will deplete all or substantially all of its capital and there is no reasonable prospect for replenishing the financial institutions' capital without federal or other governmental assistance.

(9) "Person" means a natural person, corporation, partnership, association, cooperative association, unincorporated association, trust or any other legal or commercial entity.

(10) "Principally conducted." The operations of a financial institution are "principally conducted" in the state in which the total deposits of the financial institution are largest. The operations of a financial institution holding company are principally conducted in the state in which the financial institution holding company's financial institution subsidiary having the largest percentage of the total deposits of all of the financial institution subsidiaries of the holding company is located.

(11) "Out-of-state financial institution" means a financial institution whose operations are principally conducted outside this state.

(12) "Out-of-state financial institution holding company" means a financial institution holding company whose principal place of business is, and whose operations are principally conducted, outside this state. [I.C., § 26-2603, as added by 1985, ch. 185, § 1, p. 474; am. 1987, ch. 294, § 1, p. 625; am. 1995, ch. 99, § 14, p. 299.]

**Compiler's notes.** Section 2 of S.L. 1987, ch. 294 is compiled as § 26-2605.

**26-2604. Prohibited acquisition.** — Except as authorized in this chapter, chapter 16, title 26, Idaho Code, and by the laws of the United States, no out-of-state financial institution or out-of-state financial institution holding company, nor any subsidiary or affiliate thereof, may establish or maintain an office of, or conduct the business of, a financial institution in this state; nor may such out-of-state financial institutions or out-of-state financial institution holding companies, or any subsidiaries or affiliates thereof, directly or indirectly, acquire control of, acquire substantially all of the assets of, merge with, consolidate with, or assume the deposit liabilities of an Idaho financial institution or an Idaho financial institution holding company. [I.C. § 26-2604, as added by 1985, ch. 185, § 1, p. 474; am. 1995, ch. 99, § 15, p. 299.]

**26-2605. Acquisition by out-of-state company.** — If an application has been submitted by such out-of-state financial institution holding company to, and prior written approval has been obtained from the director, pursuant to section 26-2606, Idaho Code, an out-of-state financial institution holding company may:

- (a) Acquire control of;
- (b) Acquire all or substantially all of the assets of;
- (c) Merge or consolidate with; or
- (d) Assume the deposit liabilities of an Idaho financial institution. [I.C., § 26-2605, as added by 1985, ch. 185, § 1, p. 474; am. 1987, ch. 294, § 2, p. 625; am. 1995, ch. 99, § 16, p. 299.]

**Compiler's notes.** Sections 1 and 3 of S.L. 1987, ch. 294 are compiled as §§ 26-2603 and 26-2607, respectively.

Section 5 of S.L. 1987, ch. 294 read: "An emergency existing therefor, which emergency is hereby declared to exist, the amendments to Section 26-2603, Idaho Code, which are enacted by Section 1 of this act, and the

amendments to Section 26-2607, Idaho Code, which are enacted by Section 3 of this act, shall be in full force and effect on and after the passage and approval of this act. The remaining provisions shall be in full force and effect on and after January 1, 1988."

**Sec. to sec. ref.** This section is referred to in §§ 26-1814 and 26-2603.

**26-2606. Requirements for acquisition.** — No person shall effect any of the transactions described in section 26-2605, Idaho Code, or make any public offer to do so unless it shall first have complied with the provisions of chapters 5 and 9, title 26, Idaho Code, and this section.

(1) An applicant must request authorization to engage in any of the transactions described in section 26-2605, Idaho Code, shall pay such



application fee as the director may prescribe for such transactions and shall file with the director:

- (a) An application in such form as the director may prescribe;
- (b) Such other information as the director may require pursuant to any rule, or which he determines to be necessary to allow him to make the findings in the case of any specific transactions which are required in this section;
- (c) Unless the applicant is an Idaho resident, a domestic corporation or a foreign corporation qualified to do business in this state, a written consent to service of process in any action or suit arising out of or in connection with said proposed action, said service to be on a resident of this state;
- (d) A written undertaking on the part of the applicant to provide the director, if requested, the financial institution holding company examination records and any and all examination reports of such financial institution holding company subsidiaries as the director may designate.

(2) The director may, as a condition upon acceptance of an application as complete or upon approval of an application, require cooperation from the administrative regulator or regulators of the out-of-state financial institution holding company and its subsidiaries involved in the transaction.

(3) Within thirty (30) days of acceptance of the application as complete, the director shall act upon the application by approving or disapproving it and shall state in writing his findings of fact, conclusions and order. The director may approve an application subject to such terms and conditions as he may consider necessary to protect the public interest and carry out the purposes of this chapter. The director may not approve an application for a transaction in which the applicant is a foreign corporation which has not qualified to do business in this state under title 30, Idaho Code, and which is required to do so.

(4) The director shall disapprove any application filed under this section if he finds:

- (a) That the proposed transaction would be detrimental to the safety and soundness of the applicant or to any Idaho financial institution or Idaho financial institution holding company which is a party to the proposed transaction or to a subsidiary or affiliate of that institution or holding company;
- (b) The applicant, its executive officers, directors or principal shareholders do not have a record of sound performance, efficient management, financial responsibility and integrity such that it would be against the interest of the depositors, other customers, creditors or shareholders of an Idaho financial institution or an Idaho financial institution holding company, or against the public interest to authorize the proposed transaction;
- (c) The financial condition of the applicant or any Idaho financial institution or Idaho financial institution holding company which is a party to or participant in the proposed transaction is such that the financial stability of such applicant or other institution or holding company might be jeopardized or the interests of depositors or other customers of such applicant or other institutions or holding companies might be prejudiced;

(d) The Idaho financial institution to be acquired has been chartered and actively engaged in business for less than five (5) years prior to the date of the application;

(e) The consummation of the proposed transaction will tend substantially to lessen competition within this state unless the director finds that the anticompetitive effects of the proposed transaction are clearly outweighed by the benefit of meeting the convenience and needs of the community to be served; or

(f) The applicant has not established a record of meeting the credit needs of the communities which it or its subsidiary financial institution(s) services.

(5) Subsection (4)(d) of this section shall not be construed as prohibiting either:

(a) The approval of the acquisition of any Idaho financial institution or Idaho financial institution holding company formed solely to facilitate the acquisition of all of the voting shares of an Idaho financial institution which itself has been chartered and actively engaged in business for five (5) years or more prior to the date of the application; or

(b) The acquisition of an Idaho financial institution holding company which has been in existence for less than five (5) years if each of the financial institutions controlled by the financial institution holding company have been chartered and actively engaged in business for five (5) years or more. [I.C., § 26-2606, as added by 1985, ch. 185, § 1, p. 474; am. 1995, ch. 99, § 17, p. 299.]

**26-2607. Acquisition of failing institution.** — (1) Notwithstanding any provision of the laws of this state to the contrary, if the director determines, in his discretion, that an Idaho financial institution is in danger of failing, or takes possession of a failing Idaho financial institution pursuant to the provisions of title 26, Idaho Code, and if the director deems it to be in the public interest and necessary to protect depositors, creditors and other customers of that financial institution, the director may solicit offers from, and authorize or require the acquisition of such failing Idaho financial institution by a financial institution or financial institution holding company organized and operated under the laws of any state or the United States. Acquisition may be through merger, consolidation, purchase of all or substantially all of the assets and assumption of liabilities, or purchase of all or a controlling part of the shares of the acquired institution.

(2) The director may not, under this section, accept any offers from, or authorize or require any acquisition by a financial institution holding company as described in subsection (1) of this section, unless he finds that:

(a) The subsidiaries of the financial institution holding company have demonstrated an acceptable record of meeting the credit needs of the communities it serves; and

(b) The financial institution holding company and its subsidiaries have a record of sound performance, capital adequacy, financial capacity and efficient management such that the acquisition would not jeopardize the financial stability of the acquired institution and would not be detrimen-



tal to the interests of depositors, creditors, or other customers of the acquired institution or the public interest.

(3) To protect the interest of depositors, creditors and other customers of a failing Idaho financial institution, the director may waive any of the procedures set forth in section 26-2606, Idaho Code, or in any rule of the department if he deems it necessary to implement the purposes of this section. [I.C., § 26-2607, as added by 1985, ch. 185, § 1, p. 474; am. 1987, ch. 294, § 3, p. 625; am. 1995, ch. 99, § 18, p. 299.]

**Compiler's notes.** Sections 2 and 4 of S.L. 1987, ch. 294 are compiled as §§ 26-2605 and 26-2612, respectively.

**26-2608. Conditions for approval.** — The director may make the acquisition of an Idaho financial institution by an out-of-state financial institution holding company subject to any conditions, restrictions, and requirements that would apply to the acquisition by an Idaho financial institution holding company of a financial institution or a financial institution holding company in the state where such acquiring financial institution holding company's operations are principally conducted, which conditions, restrictions and requirements would not apply to acquisitions by a financial institution or financial institution holding company all of whose financial institution subsidiaries are located in that state. [I.C., § 26-2608, as added by 1985, ch. 185, § 1, p. 474; am. 1995, ch. 99, § 19, p. 299.]

**26-2609. Penalties.** — (1) Any person who willfully violates any provision of this chapter or any rule or order issued by the director pursuant to this chapter shall forfeit and pay a civil penalty of not more than one thousand dollars (\$1,000) per day for each day during which the violation continues. The director may assess the civil penalty after giving notice and an opportunity to the person to submit data, views and arguments, and after giving due consideration to the size, financial resources and good faith of the person charged, the gravity of the violation and any data, views and arguments submitted. The director shall collect the civil penalty by bringing an action in the district court of the county in which the office of the director is located. Any applicant for approval of an acquisition is considered to have consented to the jurisdiction and venue of the court by the filing of any application for approval.

(2) The director may secure injunctive relief in the district court of the county in which the office of the director is located to prevent any change in control pending completion of the procedures set forth in this chapter. [I.C., § 26-2609, as added by 1985, ch. 185, § 1, p. 474; am. 1995, ch. 99, § 20, p. 299.]

**26-2610. Cooperative agreements.** — (1) The director is authorized to enter into cooperative and reciprocal agreements with other financial institution regulatory agencies, both federal and state, and from bank supervisory authorities from foreign countries, to facilitate the regulation of financial institutions and financial institution holding companies doing

business in this state. The director may accept reports of examinations and other records from such other agencies in lieu of conducting his own examinations of financial institutions controlled by financial institution holding companies located in other states. The director may share examination reports with such other agencies. The director may examine such institutions in Idaho, in the financial institution's home state or such other location as may be necessary. The director may take any action jointly with other regulatory agencies having concurrent jurisdiction over financial institutions and financial institution holding companies doing business in this state or may take such actions independently in order to carry out his responsibilities.

(2) The director may, in his discretion, enter into agreements with a professional association of which the department is a member. The purposes of such agreements may include the facilitation of examination of banks or bank holding companies operating in other states in addition to Idaho. Notwithstanding any other provision of law, such examination agreements may provide for the exchange of bank information, including examination reports, with such a professional association; provided however, that such communication shall not constitute a public disclosure of such records under chapter 3, title 9, Idaho Code, nor a waiver of the statutory privilege in section 26-1111, Idaho Code. [I.C., § 26-2610, as added by 1985, ch. 185, § 1, p. 474; am. 1995, ch. 99, § 21, p. 299.]

**Sec. to sec. ref.** This section is referred to in § 26-2152.

**26-2611. No repeal by implication.** — Nothing contained in this chapter, or any amendment thereto, shall be construed to amend or modify the provisions of any other chapter of this title governing the supervision or regulation of financial institutions and financial institution holding companies or the organization and powers of the department of finance and the director with respect thereto as may be provided in such other chapter. [I.C., § 26-2611, as added by 1985, ch. 185, § 1, p. 474; am. 1995, ch. 99, § 22, p. 299.]

**26-2612. Severability.** — If any court of competent jurisdiction shall adjudge to be invalid or unconstitutional any clause, sentence, paragraph, section or part of this chapter, such judgment or decree shall not affect, impair, invalidate or nullify the remainder of this chapter, but the effect thereof shall be confined to the clause, sentence, paragraph, section or part of this chapter so adjudged to be invalid or unconstitutional. [I.C., § 26-2612, as added by 1985, ch. 185, § 1, p. 474; am. 1987, ch. 294, § 4, p. 625; am. 1995, ch. 99, § 23, p. 299.]

**Compiler's notes.** Section 3 of S.L. 1987, ch. 294 is compiled as § 26-2607.

Section 5 of S.L. 1987, ch. 294 read: "An emergency existing therefor, which emergency is hereby declared to exist, the amend-

ments to Section 26-2603, Idaho Code, which are enacted by Section 1 of this act, and the amendments to Section 26-2607, Idaho code, which are enacted by Section 3 of this act, shall be in full force and effect on and after



the passage and approval of this act. The remaining provisions shall be in full force and effect on and after January 1, 1988."

**26-2613. Banks as "issuing public corporations."** — Notwithstanding any other provision of law, banks chartered by the state of Idaho and bank holding companies as defined in section 26-501, Idaho Code, shall be considered "issuing public corporations" as used in chapters 16 and 17, title 30, Idaho Code. [I.C., § 26-2613, as added by 1995, ch. 99, § 24, p. 299.]

**Compiler's notes.** Section 25 of S.L. 1995, ch. 99 is compiled as § 28-46-202.

## CHAPTER 27

### BUSINESS AND INDUSTRIAL DEVELOPMENT CORPORATIONS

#### SECTION.

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#### SECTION.

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**26-2701. Purpose of chapter.** — The purposes of this chapter are to:

(1) Promote economic development by encouraging the formation of business and industrial development corporations, a new type of private institution, to help meet the financing assistance and management assistance needs of business firms in the state.

(2) Provide for a system of licensing, regulation, and enforcement that will enable business and industrial development corporations to satisfy eligibility requirements to participate, if they so choose, in the program of the small business administration pursuant to section 7(a) of the small

business act, Public Law 85-536, 15 U.S.C. 636(a), and other programs for which they may be eligible.

(3) Provide for a system of licensing, regulation, and enforcement designed to prevent fraud, conflict of interest, and mismanagement, and to promote competent management, accurate record keeping, and appropriate communication with shareholders; in order to provide the following:

- (a) Comfort to prospective shareholders so as to facilitate equity investments in business and industrial development corporations;
- (b) Comfort to prospective debt sources so as to facilitate the borrowing of money by business and industrial development corporations; and
- (c) Protection of the general reputation of business and industrial development corporations as a type of institution in order to increase the confidence of prospective equity investors in and prospective debt sources for those institutions.

It is hereby further declared that all of the foregoing are public purposes and uses for which public moneys may be expended or granted and that such activities are governmental functions and serve a public purpose in improving or otherwise benefiting the people of this state; that the necessity of enacting the provisions hereinafter set forth is in the public interest and is hereby so declared as a matter of express legislative determination. [I.C., § 26-2701, as added by 1989, ch. 252, § 1, p. 601.]

**Sec. to sec. ref.** This chapter is referred to in §§ 67-4723 and 67-4724.

**26-2702. Definitions.** — For the purposes of this chapter:

- (1) “Advisor” means a person who regularly provides legal, accounting, or management services or advice to a licensee.
- (2) “Affiliate” means, if used with respect to a specified person other than a natural person, a person controlling or controlled by that specified person, or a person controlled by a person who also controls the specified person.
- (3) “Associate” means, if used with respect to a licensee:
  - (a) A controlling person, director, officer, agent, or advisor of that licensee.
  - (b) A director, officer, or partner of a person referred to in paragraph (a).
  - (c) A person who controls, is controlled by, or is under common control with a person referred to in paragraph (a) directly or indirectly through one or more intermediaries.
  - (d) Any close relative of any person referred to in paragraph (a).
  - (e) A person of which a person referred to in paragraphs (a) through (d) is a director or officer.
  - (f) A person in which a person referred to in paragraphs (a) through (d), or any combination of those persons acting in concert, owns or controls, directly or indirectly, a twenty percent (20%) or greater equity interest.
  - (g) A person who is in a relationship referred to in this subsection, within six (6) months before or after a licensee provides financing assistance, shall be considered to be in that relationship as of the date that licensee provides that financing assistance.
  - (h) If a licensee, in order to protect its interests, designates a person to serve as a director of, officer of, or in any capacity in the management of



a business firm to which that licensee provides financing assistance, that person shall not, on that account, be considered to have a relationship with that business firm. This subdivision does not apply if the person has, directly or indirectly, any other financial interest in the business firm or if the person, at any time before the licensee provides the financing assistance, served as a director of, officer of, or in any other capacity in the management of the business firm for a period of thirty (30) days or more.

(4) "BIDCO" means a business and industrial development corporation licensed under this chapter.

(5) "Business firm" means a person that transacts business on a regular and continual basis, or a person that proposes to transact business on a regular and continual basis.

(6) "Close relative" means parent, child, sibling, spouse, father-in-law, mother-in-law, son-in-law, brother-in-law, daughter-in-law, or sister-in-law.

(7) "Closing services" means services performed in connection with the providing of financing assistance. Closing services includes, but is not limited to, appraising property and preparing credit reports. Closing services does not include a service performed after the providing of financing assistance.

(8) "Control" means, if used with respect to a specified person, the power to direct or cause the direction of, directly or indirectly through one or more intermediaries, the management and policies of that specified person, whether through the ownership of voting securities; by contract, other than a commercial contract for goods or nonmanagement services; or otherwise. A natural person shall not be considered to control a person solely on account of being a director, officer, or employee of that person. A person who, directly or indirectly, owns of record or beneficially holds with power to vote, or holds proxies with discretionary authority to vote, twenty percent (20%) or more of the then outstanding voting securities issued by a corporation shall be rebuttably presumed to control that corporation.

(9) "Controlling person" means, if used with respect to a specified person, a person who controls that specified person, directly or indirectly through one or more intermediaries.

(10) "Corporate name" means the name of a corporation as set forth in the articles of incorporation of that corporation.

(11) "Department" means the department of finance.

(12) "Director" means the director of the department of finance.

(13) "Idaho corporation" means a corporation incorporated pursuant to title 30, Idaho Code.

(14) "Idaho nonprofit corporation" means a not-for-profit corporation incorporated pursuant to title 30, Idaho Code.

(15) "Incorporating statute" means that part of title 30, Idaho Code, under which a licensee is incorporated.

(16) "Insolvent" means a licensee that ceases to pay its debts in the ordinary course of business, that cannot pay its debts as they become due, or whose liabilities exceed its assets.

(17) "Interests of the licensee" includes the interests of shareholders of the licensee.

(18) "License" means a license issued under this chapter authorizing an Idaho corporation to transact business as a BIDCO.

(19) "Licensee" means an Idaho corporation which is licensed under this chapter.

(20) "Officer" means:

(a) If used with respect to a corporation, a person appointed or designated as an officer of that corporation by or pursuant to applicable law or the articles of incorporation, or bylaws of that corporation, or a person who performs with respect to that corporation functions usually performed by an officer of a corporation.

(b) If used with respect to a specified person other than a natural person or a corporation, a person who performs with respect to that specified person functions usually performed by an officer of a corporation with respect to that corporation.

(21) "Order" means an approval, consent, authorization, exemption, denial, prohibition, or requirement applicable to a specific case issued by the director. Order includes a condition of a license and an agreement made by a person with the director under this chapter.

(22) "Person" means an individual, proprietorship, joint venture, partnership, trust, business trust, syndicate, association, joint stock company, corporation, cooperative, government, agency of a government, or any other organization. If used with respect to acquiring control of or controlling a specified person, person includes a combination of two (2) or more persons acting in concert.

(23) "Principal shareholder" means a person that owns, directly or indirectly, of record or beneficially, securities representing ten percent (10%) or more of the outstanding voting securities of a corporation.

(24) "Short-term financing assistance" means financing assistance with a term of not more than five (5) years.

(25) "Subject person" means a controlling person, subsidiary, or affiliate of a licensee; a director, officer, or employee of a licensee or of a controlling person, subsidiary, or affiliate of a licensee; or any other person who participates in the conduct of the business of a licensee.

(26) "Subsidiary" means, if used with respect to a licensee, a company or business firm which the licensee holds control of as permitted by section 26-2718(1)(b), (c) or (d), Idaho Code.

(27) "This chapter" includes an order issued or rule promulgated under this chapter. [I.C., § 26-2702, as added by 1989, ch. 252, § 1, p. 601.]

**26-2703. Powers of director.** — (1) The director shall administer this chapter. The director may issue orders and promulgate rules that, in the opinion of the director, are necessary to execute, enforce, and effectuate the purposes of this chapter. Any rules promulgated shall be promulgated in accordance with chapter 52, title 67, Idaho Code. The director may promulgate rules pursuant to this chapter and chapter 52, title 67, Idaho Code, prior to the effective date [July 1, 1989] of this chapter.

(2) Whenever the director issues an order or license under this chapter, the director may impose conditions that are necessary, in the opinion of the director, to carry out this chapter and the purposes of this chapter.



(3) The director may honor applications from interested persons for declaratory rulings regarding any provisions of this chapter and may seek declaratory judgments from a court of competent jurisdiction.

(4) Every final order, decision, license, or other official action of the director under this chapter is subject to judicial review in accordance with law.

(5) The director is hereby authorized to use a reasonable amount of excess funds, if the director deems them to be available, from the finance administrative account for the purpose of preparing and distributing informational materials describing the provisions of this chapter. [I.C., § 26-2703, as added by 1989, ch. 252, § 1, p. 601.]

**26-2704. Applications — Investigations — Service of process. —**

(1) An application filed with the director under this chapter shall be in such a form and contain such information as the director may require.

(2) The director may make public or private investigations within or outside this state that the director considers necessary to determine whether to approve an application filed with the director under the provisions of this chapter, to determine whether a person has violated or is about to violate the provisions of this chapter, to aid in the enforcement of the provisions of this chapter or to aid in issuing an order or promulgating a rule under this chapter.

(3) For purposes of an investigation, examination, or other proceeding under this chapter, the director may administer oaths and affirmations, subpoena witnesses, compel the attendance of witnesses, take evidence, and require the production of books, papers, correspondence, memoranda, agreements, or other documents or records which the director considers relevant or material to the proceeding.

(4) If a person fails to comply with a subpoena issued by the director or to testify with respect to a matter concerning which the person may be lawfully questioned, the court, on application of the director, may issue an order requiring the attendance of the person and the giving of testimony or production of evidence.

(5) Service of process authorized to be made by the director in connection with a noncriminal proceeding under this chapter may be made by registered or certified mail. [I.C., § 26-2704, as added by 1989, ch. 252, § 1, p. 601.]

**26-2705. Fees. —** (1) The director shall set the fees required under this chapter at a level sufficient to cover the department's expenses which arise due to the administration of the provisions of this chapter provided, the fees shall be set within the parameters set forth in this section.

(a) The fee for filing an application for a license shall not exceed twenty-five hundred dollars (\$2,500).

(b) The fee for filing an application for approval to acquire control of a licensee shall not exceed twelve hundred and fifty dollars (\$1,250).

(c) The fee for filing an application for approval for a licensee to merge with another corporation, an application for approval for a licensee to

purchase all or substantially all of the business of another person, or an application for approval for a licensee to sell all or substantially all of its business or of the business of any of its offices to another licensee shall not exceed twelve hundred and fifty dollars (\$1,250). If two (2) or more applications relating to the same merger, purchase, or sale are filed, the fee for filing each application shall be the quotient determined by dividing the applicable fee set by the director by the number of the applications.

(d) The annual fee for a licensee shall not exceed twenty-five hundred dollars (\$2,500), payable on or before June 30 of each year.

(e) Whenever the director examines a licensee or a subsidiary of a licensee, within ten (10) days after receiving a statement from the director, the licensee shall pay a fee established by the director based on the number of examiner hours used for the examination, plus travel expenses. Examiner time shall be billed at a rate not less than twenty-five dollars (\$25.00) per hour and not more than forty dollars (\$40.00) per hour.

(2) A fee for filing an application with the director is nonrefundable and shall be paid at the time the application is filed with the director.

(3) A fee collected under this section shall be deposited into the finance administrative account pursuant to section 67-2702, Idaho Code. Money in this account shall be used only for the operation of the department. [I.C., § 26-2705, as added by 1989, ch. 252, § 1, p. 601.]

**26-2706. Required record keeping — Independent audit — Application to outside record keepers — Report required.** — (1) A licensee shall make and keep books, accounts, and other records in such a form and manner as the director may require. These records shall be kept at such a place and shall be preserved for such a length of time as the director may specify.

(2) The director may require by order that a licensee write down any asset on its books and records to a valuation which represents its then value. In addition, the director may require an appraisal of any assets of a licensee by an independent appraiser approved by the director.

(3) Not more than ninety (90) days after the close of each calendar year or a longer period if specified by the director, a licensee shall file with the director an audit report containing all of the following:

(a) Financial statements, including balance sheet, statement of income or loss, statement of changes in capital accounts, and statement of changes in financial position or, for a licensee that is an Idaho nonprofit corporation, comparable financial statements for, or as of the end of, the calendar year, prepared with an audit by an independent certified public accountant or an independent public accountant subject to approval by the director in accordance with generally accepted accounting principles.

(b) An unqualified report, certificate, or opinion of the independent certified public accountant or independent public accountant subject to approval by the director who performs the audit, stating that the financial statements were prepared in accordance with generally accepted accounting principles.



(c) Other information that the director may require.

(4) If a person other than a licensee makes or keeps the books, accounts, or other records of that licensee, this chapter applies to that person with respect to the performance of those services and with respect to those books, accounts, and other records to the same extent as if that person were the licensee.

(5) If a person other than an affiliate or subsidiary of a licensee makes or keeps any of the books, accounts, or other records of that affiliate or subsidiary, this chapter applies to that person with respect to those books, accounts, and other records to the same extent as if that person were the affiliate or subsidiary.

(6) If the director considers it expedient, the director may require any particular licensee to obtain the approval of the director before permitting another person to make or keep any of the books, accounts, or other records of the licensee.

(7) Each licensee, each affiliate of a licensee, and each subsidiary of a licensee shall file with the director such reports as and when the director may require. A report shall be in such a form and shall contain such information as the director may require. [I.C., § 26-2706, as added by 1989, ch. 252, § 1, p. 601.]

**26-2707. Annual report to legislature required.** — (1) The director shall publish annually and provide to the house business committee and senate commerce and labor committee, or the appropriate germane legislative committees, information on the impact of this chapter in promoting economic development in this state. At the minimum, the information shall include aggregate statistics on each of the following:

(a) The number and dollar amount of provisions of financing assistance made by licensees to business firms.

(b) The number and dollar amount of provisions of financing assistance made by licensees to business firms classified in broad categories of industry such as divisions of the standard industrial classification manual.

(c) The number and dollar amount of provisions of financing assistance made by licensees to minority owned business firms and to woman owned business firms.

(d) Estimates of the number of jobs created or retained.

(e) Estimates of the number and dollar amount of any financial assistance provided to licensed BIDCO's, or investments in individual licensed BIDCO's, for the purpose of fostering economic development by any state or federal agency, or by public or quasi-public entities, including the public employee retirement system. [I.C., § 26-2707, as added by 1989, ch. 252, § 1, p. 601.]

**26-2708. Annual license review by director.** — (1) The director shall examine each licensee not less than once each calendar year to determine whether or not the licensee is in compliance with the provisions of this chapter.

(2) The director may at any time examine a licensee or subsidiary of a licensee.

(3) A director, officer, or employee of a licensee or of a subsidiary of a licensee being examined by the director, or a person having custody of any of the books, accounts, or records of the licensee or of the subsidiary, shall exhibit to the director, on request, any of the books, accounts, and other records of the licensee or of the subsidiary and shall otherwise facilitate the examination so far as it is in their power to do so.

(4) If in the director's opinion it is necessary in the examination of a licensee or of a subsidiary of a licensee, the director may retain a certified public accountant, attorney, appraiser, or other person to assist the director. Within ten (10) days after receipt of a statement from the director, the licensee being examined shall pay the fees of a person retained by the director under this subsection. [I.C., § 26-2708, as added by 1989, ch. 252, § 1, p. 601.]

**26-2709. Requirements for licensure.** — (1) An Idaho corporation may apply to the director for licensure as a BIDCO. A person other than an Idaho corporation shall not apply for a license.

(2) After a review of information regarding the directors, officers, and controlling persons of the applicant, a review of the applicant's business plan, including at least three (3) years of detailed financial projections and other relevant information, and a review of additional information considered relevant by the director, the director shall approve an application for a license if, and only if, the director determines all of the following:

(a) The applicant has a net worth, or firm financing commitments which demonstrate that the applicant will have a net worth when the applicant begins transacting business as a BIDCO, in liquid form available to provide financing assistance, that is adequate for the applicant to transact business as a BIDCO as determined under subsection (3).

(b) Each director, officer, and controlling person of the applicant is of good character and sound financial standing; each director and officer of the applicant is competent to perform his or her functions with respect to the applicant; and the directors and officers of the applicant are collectively adequate to manage the business of the applicant as a BIDCO.

(c) It is reasonable to believe that the applicant, if licensed, will comply with this chapter.

(d) The applicant has reasonable promise of being a viable, ongoing BIDCO and of satisfying the basic objectives of its business plan.

(3) In determining if the applicant has a net worth or firm financing commitments adequate to transact business as a BIDCO, the director shall consider the types and variety of financing assistance that the applicant plans to provide; the experience that the directors, officers, and controlling persons of the applicant have in providing financing and managerial



assistance to business firms; the financial projections and other relevant information from the applicant's business plan; and whether the applicant intends to operate as a profit or nonprofit corporation. Except as otherwise provided in this chapter, the director shall require a minimum net worth of not less than one million dollars (\$1,000,000) and not more than ten million dollars (\$10,000,000). The director may require a minimum net worth of less than one million dollars (\$1,000,000), but not less than five hundred thousand dollars (\$500,000), if, in the context of the applicant's business plan, the initial capitalization amount is adequate for the applicant to transact business as a BIDCO because of special circumstances including, but not limited to, funded overhead, low overhead, or specialized opportunities.

(4) For the purposes of subsection (2), the director may find any of the following:

(a) That a director, officer, or controlling person of an applicant is not of good character if the director, officer, or controlling person, or a director or officer of a controlling person, has been convicted of, entered a plea of guilty to, has been found guilty of, or has pleaded nolo contendere to a crime involving fraud or dishonesty.

(b) That it is not reasonable to believe that an applicant, if licensed, will comply with this chapter, if the applicant has been convicted of, entered a plea of guilty to, has been found guilty of, or has pleaded nolo contendere to a crime involving fraud or dishonesty.

(5) For purposes of subsection (2), subsection (4) shall not be considered to be the only grounds upon which the director may find that a director, officer, or controlling person of an applicant is not of good character or that it is not reasonable to believe that an applicant, if licensed, will comply with the provisions of this chapter. [I.C., § 26-2709, as added by 1989, ch. 252, § 1, p. 601.]

**26-2710. Preliminary approval — Denial in writing — Posting of license.** — (1) A person may apply to the director for preliminary approval of an application for a license. Notwithstanding that commitments to invest in the equity of the applicant have not been obtained and that all directors and officers of the applicant have not been identified, the director may grant preliminary approval. In issuing an order granting preliminary approval, the director shall indicate that, for the director to determine that the requirements of section 26-2709, Idaho Code, are satisfied, final approval is conditioned on review by the director of the applicant's completion of fund-raising, including the controlling persons, and review by the director of the completion of the roster of directors and officers. If an application for preliminary approval has been granted, before granting final approval of the application for a license, the director may request an updated balance sheet and such other information considered relevant by the director.

(2) If a person files an application under this section, the fee required in section 26-2705(1)(a), Idaho Code, is payable at the time the application is filed with the director.

(3) If the director denies an application under this section or section 26-2709, Idaho Code, the director shall provide the applicant with a written statement explaining the basis for the denial.

(4) If an application for a license is approved and all conditions precedent to the issuance of that license are fulfilled, the director shall issue a license to the applicant. A licensee shall post the license in a conspicuous place in the licensee's principal office. A license is not transferable or assignable. [I.C., § 26-2710, as added by 1989, ch. 252, § 1, p. 601.]

**26-2711. Use of BIDCO name restricted — Exception.** — (1) Except as otherwise provided in subsection (2), a person transacting business in this state, other than a licensee, shall not use a name or title which indicates that the person is a business and industrial development corporation including, but not limited to, use of the term "BIDCO", and shall not otherwise represent that the person is a business and industrial development corporation or a licensee.

(2) Before being issued a license under this chapter, an Idaho corporation that proposes to apply for a license or that applies for a license may perform, under a name that indicates that the corporation is a business and industrial development corporation, the acts necessary to apply for and obtain a license and to otherwise prepare to commence transacting business as a licensee. Such a corporation shall not represent that it is a licensee until after the license has been obtained. A licensee shall not misrepresent the meaning or effect of its license. [I.C., § 26-2711, as added by 1989, ch. 252, § 1, p. 601.]

**26-2712. Dual licensure — Exceptions.** — (1) An Idaho corporation that is licensed under another law of this state or under any law of the United States may apply for and be issued a license under this chapter unless the transaction of business by that corporation as a licensee under another law of this state or a law of the United States violates this chapter or is contrary to the purposes of this chapter.

(2) An Idaho corporation that is licensed under this chapter may apply for and be issued a license under another law of this state or a law of the United States unless the transaction of business by that corporation as a licensee under another law of this state or a law of the United States would violate this chapter or would be contrary to the purposes of this chapter. [I.C., § 26-2712, as added by 1989, ch. 252, § 1, p. 601.]

**26-2713. Surrender of license.** — (1) Upon approval of a two-thirds ( $\frac{2}{3}$ ) vote of its board of directors and after complying with subsection (2) of this section, a licensee may apply to the director to have the director accept the surrender of the licensee's license. If the director determines that the requirements of this section have been satisfied, the director shall approve the application unless in the opinion of the director the purpose of the application is to evade a current or prospective action by the director pursuant to this chapter.

(2) Not less than sixty (60) days before filing an application with the director under subsection (1) of this section, a licensee shall notify all of its



shareholders and all of its creditors of its intention to file the application. Each creditor shall be notified of the right to comment to the director. Each shareholder shall be notified of the right to file with the licensee an objection to the proposed surrender of the license within the sixty (60) day period and shall be advised that, if the shareholder files an objection, the shareholder should send a copy of the objection to the director. If shareholders representing twenty percent (20%) of the outstanding voting securities of the licensee file an objection, the licensee shall not proceed with the application under subsection (1) of this section unless the application is approved by a vote of shareholders representing two-thirds ( $\frac{2}{3}$ ) of the outstanding voting securities of the licensee. [I.C., § 26-2713, as added by 1989, ch. 252, § 1, p. 601.]

**26-2714. Corporate name — Directors — Dividends.** — (1) The corporate name of each licensee may include the phrase “Business and Industrial Development Corporation” or may include the word “BIDCO”. A licensee shall not transact business under a name other than its corporate name.

(2) The board of directors of each licensee shall consist of not less than seven (7) directors. The board of directors of each licensee shall hold a meeting not less than once each calendar quarter.

(3) Within thirty (30) days after the death, resignation, or removal of a director or officer; the election of a director; or the appointment of an officer, the licensee shall notify the director in writing of the event and shall provide any additional information which the director may require.

(4) A licensee shall not pay, or obligate itself to pay, a cash dividend or dividend in kind to its shareholders, unless that payment is consistent with a dividend policy which has been adopted by the licensee and approved by the director. In reviewing dividend policies under this section, the director shall be flexible in recognizing the special characteristics of BIDCOs and the diverse range of potentially appropriate dividend policies for BIDCOs, while at the same time protecting against unsafe or unsound acts which could threaten the viability of the licensee as an ongoing BIDCO. The director may at any time withdraw any previous approval of a dividend policy if the director determines that the withdrawal is necessary to prevent unsafe or unsound acts.

(5) Without the prior approval of the director, a licensee shall not buy back, or obligate itself to buy back a share of stock from a shareholder. [I.C., § 26-2714, as added by 1989, ch. 252, § 1, p. 601.]

**26-2715. Offices — Location.** — (1) A licensee shall maintain not less than one (1) office in this state.

(2) A licensee shall not maintain an office at any place outside this state.

(3) Each office of a licensee shall be located in a place which is reasonably accessible to the public.

(4) A licensee shall post in a conspicuous place at each of its offices a sign which bears the corporate name of the licensee.

(5) A licensee shall maintain at each of its offices personnel who are competent to conduct the business of such an office.

(6) Upon written notice to the director, a licensee may establish, relocate, or close an office. [I.C., § 26-2715, as added by 1989, ch. 252, § 1, p. 601.]

**26-2716. Business activities — Corporate powers.** — (1) The business of a licensee shall be the business of providing financing assistance and management assistance to business firms. A licensee shall not engage in a business other than the business of providing financing assistance and management assistance to business firms.

(2) In addition to the powers and privileges provided to a licensee by this chapter, a licensee has all powers and privileges conferred by its incorporating statute which are not inconsistent with or limited by this chapter. The powers of a licensee include, but are not limited to, all of the following:

(a) To borrow money and otherwise incur indebtedness for its purposes, including issuance of corporate bonds, debentures, notes, or other evidence of indebtedness. A licensee's indebtedness may be secured or unsecured, and may involve equity features including, but not limited to, provisions for conversion to stock and warrants to purchase stock.

(b) To make contracts.

(c) To incur and pay necessary and incidental operating expenses.

(d) To purchase, receive, hold, lease, or otherwise acquire, or to sell, convey, mortgage, lease, pledge, or otherwise dispose of, real or personal property, together with rights and privileges that are incidental and appurtenant to these transactions of real or personal property, if the real or personal property is for the licensee's use in operating its business or if the real or personal property is acquired by the licensee from time to time in satisfaction of debts or enforcement of obligations.

(e) To make donations for charitable, educational, research, or similar purposes.

(f) To implement a reasonable and prudent policy for conserving and investing its money before the money is used to provide financing assistance to business firms or to pay the expenses of the licensee. [I.C., § 26-2716, as added by 1989, ch. 252, § 1, p. 601.]

**Sec. to sec. ref.** This section is referred to in § 67-4723.

**26-2717. Forms of financial and management assistance — Interest rates.** — (1) A licensee may determine the form and the terms and conditions for financing assistance provided by that licensee to a business firm including, but not limited to, forms such as loans; purchase of debt instruments; straight equity investments such as purchase of common stock or preferred stock; debt with equity features such as warrants to purchase stock, convertible debentures, or receipt of a percent of net income or sales; royalty based financing; guaranteeing of debt; or leasing of property. A licensee may purchase securities of a business firm either directly or indirectly through an underwriter. A licensee may participate in the program of the small business administration pursuant to section 7(a) of the small business act, Public Law 85-536, 15 U.S.C. 636(a) or any successor statute, or any other government program for which the licensee is eligible



and which has as its function the provision or facilitation of financing assistance or management assistance to business firms. If a licensee participates in a program referred to in this subsection, the licensee shall comply with the requirements of that program.

(2) Management assistance provided by a licensee to a business firm may encompass both management or technical advice and management or technical services.

(3) Financing assistance or management assistance provided by a licensee to a business firm shall be for the business purposes of that business firm.

(4) A licensee may exercise the incidental powers that are necessary or convenient to carry on the business of, or are reasonably related to the business of, providing financing assistance and management assistance to business firms.

(5) In connection with an extension of credit by a person to a licensee or an extension of credit by a licensee to a business entity, the parties may agree to any rate of interest. [I.C., § 26-2717, as added by 1989, ch. 252, § 1, p. 601.]

**26-2718. BIDCO acquiring another firm — Application — Requirements.** — (1) Either by itself or in concert with a director, officer, principal shareholder, or affiliate; another licensee; or a director, officer, principal shareholder, or affiliate of another licensee, a licensee shall not hold control of a business firm, except as follows:

(a) If and to the extent necessary to protect the licensee's interest as creditor of, or investor in, the business firm, a licensee that had provided financing assistance to a business firm may acquire and hold control of that business firm. Unless the director approves a longer period, a licensee holding control of a business firm under this subdivision shall divest itself of the interest which constitutes holding control as soon as practicable or within three (3) years after acquiring that interest, whichever is sooner.

(b) With the approval of the director, a licensee may acquire and hold control of a corporation which has offices located only in this state and which is licensed as a small business investment company under the small business investment act of 1958, Public Law 85-699, 72 Stat. 689 or any successor statute.

(c) With the approval of the director, a licensee may acquire and hold control of a company located in this state which is a local development company in accordance with the small business investment act of 1958, whether or not such a development company is or may become certified by the small business administration under section 503 of the small business investment act of 1958, 15 U.S.C. 697 or any successor statute.

(d) With the approval of the director, a licensee may acquire and hold control of another business firm with offices only in this state which is engaged in no business other than the business of providing financing assistance and management assistance to business firms.

(e) With the approval of the director, a licensee may acquire and hold control of a business firm not referred to in paragraphs (a) through (d) of

this subsection. The director shall not approve an application under this subdivision unless the director determines that such an approval will not cause the amount of the licensee's investments in business firms covered by this subdivision to exceed fifteen percent (15%) of the amount of the assets of the licensee and that in the director's judgment such an approval will promote the purposes of this chapter. An approval by the director under this subdivision shall be for a period of not more than three (3) years, except that in a particular case the director may subsequently extend the period beyond three (3) years if the director determines that a longer period is needed and is consistent with the purposes of this chapter.

(2) If the director fails to issue an order approving or denying an application under subsection (1)(b) or (c) of this section, within forty-five (45) days from receipt by the director of an application which complies with section 26-2704, Idaho Code, the application shall be considered approved by the director.

(3) For the purposes of subsection (1) of this section, "hold control" means ownership, directly or indirectly, of record or beneficially, or voting securities greater than:

(a) For a business firm with outstanding voting securities held by fewer than fifty (50) shareholders, forty percent (40%) of the outstanding voting securities.

(b) For a business firm with outstanding voting securities held by fifty (50) or more shareholders, twenty-five percent (25%) of the outstanding voting securities.

(4) If a licensee anticipates acquiring and holding control of a business firm under subsection (1)(a) of this section, the licensee shall file with the director a plan for acquiring and holding control of the business firm that shall include at least all of the following:

(a) The reasons it is necessary for the licensee to acquire and hold control of the business firm.

(b) The percentage of outstanding voting securities of the business firm the licensee plans to own.

(c) The licensee's proposed course of action upon obtaining control of the business firm.

(d) The length of time the licensee anticipates it will be necessary to hold control of the business firm.

(5) The director may require the licensee to demonstrate the necessity for the licensee to hold control of a business firm under subsection (1)(a) of this section. [I.C., § 26-2718, as added by 1989, ch. 252, § 1, p. 601.]

**26-2719. Sound business practices required.** — (1) A licensee shall transact its business in a safe and sound manner and shall maintain itself in a safe and sound condition.

(2) In determining whether a licensee is transacting business in a safe and sound manner or has committed an unsafe or unsound act, the director shall not consider the risk of a provision of financing assistance to a business firm, unless the director determines that the risk is so great compared with the realistically expected return as to demonstrate gross mismanagement.



(3) The provisions of subsection (2) of this section do not limit the authority of the director to do any of the following:

(a) Determine that a licensee's financing assistance to a single business firm or a group of affiliated business firms is in violation of subsection (1) of this section or constitutes an unsafe or unsound act, if the amount of that financing assistance is unduly large in relation to the total assets or the total shareholders equity of the licensee.

(b) Require that a licensee maintain a reserve in the amount of anticipated losses.

(c) Require that a licensee have in effect a written financing assistance policy, approved by its board of directors, including credit evaluation and other matters. The director shall not require that a licensee adopt a financing assistance policy that contains standards which prevent the licensee from exercising needed flexibility in evaluating and structuring financing assistance to business firms on a deal by deal basis. [I.C., § 26-2719, as added by 1989, ch. 252, § 1, p. 601.]

**26-2720. Conflict of interest — Defined.** — (1) For purposes of this section:

(a) "Associate" means that term as defined as in section 26-2702, Idaho Code.

(b) "Relative" means parent, child, sibling, spouse, father-in-law, mother-in-law, son-in-law, brother-in-law, daughter-in-law, sister-in-law, grandparent, grandchild, nephew, niece, uncle, or aunt.

(2) If a licensee provides financing assistance to a business firm or engages in another business transaction, and if that financing assistance or transaction involves a potential conflict of interest, the terms and conditions under which the licensee provides the financing assistance or engages in the transaction shall not be less favorable to the licensee than the terms and conditions that would be required by the licensee in the ordinary course of business if the transaction did not involve a potential conflict of interest. Each person who participates in the decision of the licensee relating to a transaction described in this section and has knowledge of a potential conflict of interest involving that transaction shall take care that the potential conflict of interest is disclosed in the financing documents of the transaction or, for a business transaction not involving financing assistance, in another appropriate document.

(3) For the purposes of subsection (2) of this section, transactions engaged in by a licensee which involve a potential conflict of interest include, but are not limited to, the following:

(a) Providing financing assistance to a principal shareholder of the licensee, to a person controlled by a principal shareholder of the licensee, or to a director, officer, partner, relative, controlling person, or affiliate of a principal shareholder of the licensee.

(b) Providing financing assistance to a business firm to which a principal shareholder of the licensee: a director, officer, partner, relative, controlling person, or affiliate of a principal shareholder of a licensee, or a person controlled by a principal shareholder of the licensee provides or plans to provide contemporaneous financing assistance.

(c) Providing financing assistance to a business firm which has or is expected to have a substantial business relationship with another business firm which has a director, officer, or controlling person who is also a director, officer, or controlling person of the licensee or who is the spouse of a director, officer, or controlling person of the licensee.

(d) Providing financing assistance to a business firm if that business firm, or a director, officer, or controlling person of that business firm, contemporaneously has lent or will lend money to an associate of the licensee.

(e) Providing financing assistance for the purchase of property of an associate or principal shareholder of the licensee.

(f) Selling or otherwise transferring any of its assets to an associate or principal shareholder of the licensee.

(4) Nothing in this section or in any other section of this chapter limits the authority of the director to determine that an act involves a conflict of interest and therefore is an unsafe or unsound act.

(5) Except with the approval of the director, a licensee shall not provide a lien on or security interest in any of its property for the purpose of securing an obligation of, or an obligation incurred for the benefit of, another person. [I.C., § 26-2720, as added by 1989, ch. 252, § 1, p. 601.]

**26-2721. Acquisition of BIDCO — Approval required.** — (1) Without the prior approval of the director, a person shall not acquire control of a licensee.

(2) With respect to an application for approval to acquire control of a licensee, if the director determines, that the applicant and the directors and officers of the applicant are of good character and sound financial standing; that it is reasonable to believe that, if the applicant acquires control of the licensee, the applicant will comply with this chapter; and that the applicant's plans, if any, to make a major change in the business, corporate structure, or management of the licensee are not detrimental to the safety and soundness of the licensee, the director shall approve the application. If, after notice and a hearing, the director determines otherwise, the director shall deny the application.

(3) For purposes of subsection (2) of this section, the director may determine any of the following:

(a) That an applicant or a director or officer of an applicant is not of good character if that person has been convicted of, or has pleaded nolo contendere to, a crime involving fraud or dishonesty.

(b) That an applicant's plan to make a major change in the management of a licensee is detrimental to the safety and soundness of the licensee if the plan provides for a person to become a director or officer of the licensee and that person has been convicted of, or has pleaded nolo contendere to, a crime involving fraud or dishonesty.

(4) The conditions described in subsection (3) of this section are not the only conditions upon which the director may determine that an applicant or a director or an officer of an applicant is not of good character or that an applicant's plan to make a major change in the management of a licensee is detrimental to the safety and soundness of the licensee. [I.C., § 26-2721, as added by 1989, ch. 252, § 1, p. 601.]



**26-2722. Merger — Requirements — Applications.** — (1) A licensee shall not merge with another corporation unless:

(a) The licensee is the surviving corporation and the merger is approved by the director.

(b) The licensee is a disappearing corporation, the surviving corporation is a licensee and the merger is approved by the director.

(2) A licensee shall not purchase all or substantially all of the business of another person unless the purchase is approved by the director.

(3) A licensee shall not sell all or substantially all of its business or of the business of any of its offices to another person unless that other person is a licensee and the sale is approved by the director.

(4) The director shall approve an application for approval of a merger, purchase, or sale, if, and only if, the director determines all of the following:

(a) That the merger, purchase, or sale will be safe and sound with respect to the acquiring licensee.

(b) That, upon consummation of the merger, purchase, or sale, it is reasonable to believe that the acquiring licensee will comply with this chapter.

(c) That the merger, purchase, or sale will not have a major detrimental impact on competition in the providing of financial assistance or management assistance to business firms, or if there will be such a detrimental impact, the merger, purchase, or sale is necessary in the interests of the safety and soundness of any of the parties to the merger, purchase, or sale, or is otherwise, on balance, in the public interest. [I.C., § 26-2722, as added by 1989, ch. 252, § 1, p. 601.]

**26-2723. Violation of chapter — Director's powers — Hearings — Cease and desist.** — (1) If in the opinion of the director, a person violates, or there is reasonable cause to believe that a person is about to violate the provisions of this chapter, the director may bring an action in the district court to enjoin the violation or to enforce compliance with the provisions of this chapter. Upon a showing that a person has engaged in or is about to engage in, an act or practice constituting a violation of the provisions of this chapter, a restraining order, preliminary or permanent injunction, or writ of mandamus shall be granted, and a receiver or a conservator may be appointed for the defendant or the defendant's assets. The court shall not require the director to post a bond in an action brought under this chapter.

(2) If the director finds that a person has violated or that there is reasonable cause to believe that a person is about to violate the provisions of section 26-2711, Idaho Code, the director may order the person to cease and desist from the violation unless and until the person is issued a license.

(3) Within thirty (30) days after an order is issued under subsection (2) of this section, the person to whom the order is directed may file with the director an application for a hearing on the order. If the director fails to commence a hearing within fifteen (15) business days after that application is filed or within a longer period to which the person consents, the order shall be considered rescinded. Upon the conclusion of the hearing, the director shall affirm, modify, or rescind the order. A person to whom an order

is issued under subsection (2) of this section may petition for judicial review of the order in conformance with the provisions of chapter 52, title 67, Idaho Code.

(4) If, after notice and a hearing, the director determines that a licensee or a subject person of a licensee has violated or is violating, or that there is reasonable cause to believe that a licensee or subject person of a licensee is about to violate, this chapter or another applicable law, or that a licensee or subject person of a licensee has engaged or participated or is engaging or participating, or that there is a reasonable cause to believe that a licensee or subject person of a licensee is about to engage or participate, in an unsafe or unsound act with respect to the business of that licensee, the director may order that licensee or subject person to cease and desist from the action or violation. The order may require the licensee or subject person to take affirmative action to correct any condition resulting from the action or violation.

(5) If the director determines that any of the factors set forth in subsection (4) of this section are true with respect to a licensee or subject person of a licensee and that the action or violation is likely to cause the insolvency of or substantial dissipation of the assets or earnings of the licensee; is likely to seriously weaken the condition of the licensee; or is likely to otherwise seriously prejudice the interests of the licensee before the completion of proceedings conducted under subsection (4) of this section, the director may order the licensee or subject person to cease and desist from that action or violation. The order may require the licensee or subject person to take affirmative action to correct any condition resulting from the action or violation.

(6) Within thirty (30) days after an order is issued under subsection (5) of this section, the licensee or subject person of a licensee to whom the order is directed may file with the director an application for a hearing on the order. If the director fails to commence a hearing within fifteen (15) business days after the application is filed or within a longer period to which the licensee or subject person consents, the order shall be considered rescinded. Upon the hearing, the director shall affirm, modify, or rescind the order. A licensee or subject person to whom an order is issued under subsection (5) of this section may petition for judicial review of the order pursuant to chapter 52, title 67, Idaho Code.

(7) If the director finds that a licensee has failed to comply with the provisions of section 26-2717(5), Idaho Code, the director shall revoke the certification of eligible equity investment and shall so notify the licensee promptly. [I.C., § 26-2723, as added by 1989, ch. 252, § 1, p. 601.]

#### **26-2724. Violation of chapter — Removal of subject person. —**

(1) The director may issue an order removing a subject person of a licensee from his office, if any, with the licensee and prohibiting the subject person from further participating in any manner in the conduct of the business of the licensee, if, after notice and a hearing, the director determines all of the following are true:

(a) The subject person has violated the provisions of this chapter or another applicable law; the subject person has engaged or participated in



an unsafe or unsound act with respect to the business of the licensee; or the subject person has engaged or participated in an act which constitutes a breach of the subject person's fiduciary duty.

(b) The act, violation, or breach of fiduciary duty has caused or is likely to cause substantial financial loss or other damage to the licensee or has seriously prejudiced or is likely to seriously prejudice the interests of the licensee, or the subject person has received financial gain by reason of the act, violation, or breach of fiduciary duty.

(c) The act, violation, or breach of fiduciary duty either involves dishonesty on the part of the subject person or demonstrates the subject person's gross negligence with respect to the business of the licensee or a willful disregard for the safety and soundness of the licensee.

(2) The director may issue an order removing the subject person from his office with the licensee, if any, and prohibiting the subject person from further participating in any manner in the conduct of the business of the licensee, except with the prior consent of the director, if, after notice and a hearing, the director determines that, by engaging or participating in an act with respect to a financial or other business institution which resulted in substantial financial loss or other damage, the subject person of a licensee has demonstrated both of the following:

(a) Dishonesty or willful or continuing disregard for the safety and soundness of the financial or other business institution.

(b) Unfitness to continue as a subject person of the licensee or to participate in conducting the business of the licensee.

(3) If the director determines that the factors set forth in subsection (1) or (2) of this section are true with respect to a subject person of a licensee, and that it is necessary for the protection of the interest of the licensee or for the protection of the public interest that the director immediately suspend the subject person from his or her office, if any, with the licensee and prohibit the subject person from further participating in any manner in conducting the business of the licensee, the director may issue an order suspending the subject person from his or her office, if any, with the licensee and prohibiting the subject person from further participating in any manner in conducting the business of the licensee, except with the consent of the director.

(4) Within thirty (30) days after an order is issued under subsection (3) of this section, the subject person of a licensee to whom the order is directed may file with the director an application for a hearing on the order. If the director fails to begin a hearing within fifteen (15) business days after the application is filed or within a longer period to which the subject person consents, the order shall be considered rescinded. Upon the conclusion of the hearing, the director shall affirm, modify, or rescind the order. A subject person of a licensee to whom an order is issued under subsection (3) of this section may petition for judicial review of the order pursuant to chapter 52, title 67, Idaho Code.

(5) A person to whom an order is issued under this section may apply to the director to modify or rescind the order. The director shall not modify or rescind the order unless the director determines that it is in the public interest to do so and that it is reasonable to believe that the person, if and

when he or she becomes a subject person of a licensee, will comply with this chapter.

(6) As used in this section, "office", if used with respect to a licensee, means the position of director, officer, or employee of the licensee or of a subsidiary of the licensee. [I.C., § 26-2724, as added by 1989, ch. 252, § 1, p. 601.]

**26-2725. Indictment or conviction of a crime — Removal of subject person.** — (1) If the director determines that a subject person of a licensee has been indicted by a grand jury or has been bound over for trial by a court for a crime involving dishonesty or breach of trust, and that the fact that the person continues to be a subject person of the licensee may threaten the interests of the licensee or may threaten to impair public confidence in the licensee, the director may issue an order suspending the subject person from his office, if any, with the licensee and prohibiting the subject person from further participating in any manner in the conduct of the business of the licensee, except with the consent of the director.

(2) If the director determines that a subject person or former subject person of a licensee to whom an order was issued under subsection (1) of this section, or another subject person of a licensee, has been convicted of, entered a plea of guilty to, has been found guilty of a crime which is punishable by imprisonment for a term of not less than one (1) year and which involves dishonesty or breach of trust, and that the fact that the person continues to be or will resume to be a subject person of the licensee may threaten the interests of the licensee or may threaten to impair public confidence in the licensee, the director may issue an order suspending or removing the subject person or former subject person from his office, if any, with the licensee and prohibiting the subject person from further participating in any manner in the conduct of the business of the licensee, except with the prior consent of the director.

(3) Within thirty (30) days after an order is issued under subsection (1) or (2) of this section, the subject person of a licensee to whom the order is directed may file with the director an application for a hearing on the order. If the director fails to commence a hearing within fifteen (15) business days after the application is filed or within a longer period to which the subject person consents, the order shall be considered rescinded. Upon the conclusion of the hearing, the director shall affirm, modify, or rescind the order. A subject person or former subject person of a licensee to whom an order is issued under subsection (1) or (2) of this section may petition for judicial review of the order pursuant to chapter 52, Title 67, Idaho Code.

(4) The fact that a subject person of a licensee charged with a crime involving dishonesty or breach of trust is not convicted of the crime shall not preclude the director from issuing an order to the subject person under any other provision of this chapter.

(5) A person to whom an order is issued under this section may apply to the director to modify or rescind the order. The director shall not modify or rescind the order unless the director determines that it is in the public interest to do so and that it is reasonable to believe that the person, if and



when he or she becomes a subject person of a licensee, will comply with this chapter.

(6) As used in this section, "office", if used with respect to a licensee, means the position of director, officer, or employee of the licensee or of a subsidiary of the licensee. [I.C., § 26-2725, as added by 1989, ch. 252, § 1, p. 601.]

**26-2726. Disclosure to shareholders — Board of directors. —**

(1) If, in the opinion of the director, disclosure to shareholders regarding a matter is warranted, the director may require a licensee, in such a form and manner as the director may specify, to disclose to the shareholders of a licensee the results of a communication or order from the director addressed to the licensee or to a subject person of the licensee.

(2) If the director considers it expedient, the director may call a meeting of the board of directors of a licensee by giving notice of the time, place, and purpose of the meeting not less than five (5) days before the meeting to each director either by personal service or by registered or certified mail sent to the director's last known address as shown in the records of the director.

(3) If the director considers it expedient, the director may call a meeting of the shareholders of a licensee by giving notice of the time, place, and purpose of the meeting not less than five (5) days before the meeting to each shareholder either by personal service or by registered or certified mail sent to the shareholder's last known address as shown by the books of the licensee. The licensee shall pay the expenses of the notice and of a meeting called under this subsection. [I.C., § 26-2726, as added by 1989, ch. 252, § 1, p. 601.]

**26-2727. Order to refrain from offering financial assistance — Conditions — Hearing. —**

(1) The director may issue an order directing a licensee to refrain from providing any additional financing assistance to business firms if, in the opinion of the director, the order is necessary to protect the interest of the licensee or the public interest, and if, after notice and a hearing, the director determines that any of the following are true:

(a) The licensee or a controlling person, subsidiary, or affiliate of the licensee has violated the provisions of this chapter or another applicable law.

(b) The licensee is conducting its business in an unsafe and unsound manner.

(c) The licensee is in a condition that makes it unsafe or unsound for the licensee to transact business.

(d) The licensee has ceased to transact business as a business and industrial development corporation.

(e) The licensee is insolvent.

(f) The licensee has suspended payment of its obligations, has made an assignment for the benefit of its creditors, or has admitted in writing its inability to pay its debts as they become due.

(g) The licensee has applied for an adjudication of bankruptcy, reorganization, arrangement, or other relief under a bankruptcy, reorganization,

insolvency, or moratorium law, or that a person has applied for such relief under such a law against a licensee and the licensee has by any affirmative act approved of or consented to the action or such relief has been granted.

(h) A fact or condition exists which would have been grounds for denying the application if the fact or condition had existed at the time the licensee applied for its license.

(2) If the director determines that any of the factors set forth in subsection (1) of this section are true with respect to a licensee and that it is necessary for the protection of the interests of the licensee or the public interest that the director immediately issue an order directing the licensee to refrain from providing any additional financing assistance to business firms, the director may issue such an order without a hearing. Within thirty (30) days after an order is issued under this subsection, the licensee to whom the order is directed may file with the director a request for a hearing on the order. If the director fails to commence a hearing within fifteen (15) business days after the request is filed or within a longer period to which the licensee consents, that order shall be considered rescinded. Upon the conclusion of the hearing, the director shall affirm, modify, or rescind the order.

(3) With the consent of the director, a licensee which has been the subject of an order under subsection (1) or (2) of this section may resume providing financing assistance to business firms under such conditions as the director may prescribe.

(4) A person to whom an order is issued under subsection (1) or (2) of this section may apply to the director to modify or rescind the order. The director shall not grant the application unless the director determines that it is in the public interest to do so and that it is reasonable to believe that the person, if and when the order is modified or rescinded, will comply with this chapter. [I.C., § 26-2727, as added by 1989, ch. 252, § 1, p. 601.]

**26-2728. Appointment of trustee — Liquidation of the BIDCO — Procedure.** — (1) If the director finds that any of the factors set forth in section 26-2727, Idaho Code, are true with respect to a licensee and that it is necessary for the protection of the interests of the licensee or for the protection of the public interest that the director take immediate possession of the property and business of the licensee, the director may appoint a conservator for the licensee. The director may appoint as conservator one (1) of the employees of the department or some other competent and disinterested person. The department shall be reimbursed out of the assets of the conservatorship for all sums expended by the department in connection with the conservatorship as expenses. Upon the approval of the director, the expenses of the conservatorship shall be paid out of the assets of the licensee. The expenses shall be a first charge upon the assets and shall be fully paid before any final distribution is made.

(2) Under the direction of the director, the conservator shall take possession of the books, records, and assets of the licensee and shall take such action with respect to employees, agents, or representatives of the licensee or any other action as may be necessary to conserve the assets of the licensee



or ensure payment of obligations of the licensee pending further disposition of its business as provided by law. At any appropriate time, the director may terminate the conservatorship and permit the licensee to resume the transaction of its business subject to the terms, conditions, restrictions and limitations the director may prescribe.

(3) If in the opinion of the director it is appropriate that the licensee be liquidated, the director may apply to the district court for the county in which the principal office of the licensee is located for the appointment of a receiver for the licensee, if the director determines that any of the following are true:

(a) The licensee is insolvent.

(b) The licensee has suspended payment of its obligations, has made an assignment for the benefit of its creditors, or has admitted in writing its inability to pay its debts as they become due.

(c) The licensee has applied for an adjudication of bankruptcy, reorganization, arrangement, or other relief under a bankruptcy, reorganization, insolvency, or moratorium law.

(d) A person has applied for the relief described under paragraph (c) against any licensee and that licensee has by an affirmative act approved of or consented to the action or the relief has been granted.

(e) The licensee is in a condition that makes it unsafe or unsound for the licensee to transact business.

(4) If a receiver is appointed under subsection (3) of this section, the receiver shall liquidate the property and business of the licensee in the manner provided for in chapter 10, title 26, Idaho Code, as if the licensee were a bank. [I.C., § 26-2728, as added by 1989, ch. 252, § 1, p. 601.]

**26-2729. Violation of chapter — Civil penalties.** — (1) If, after notice and a hearing, the director finds that a person has violated the provisions of this chapter, he may order that person to pay to the director a civil penalty in the amount the director specifies. However, the amount of the civil penalty shall not exceed one thousand dollars (\$1,000) for each violation, or in the case of a continuing violation, one thousand dollars (\$1,000) for each day for which the violation continues. Money collected for a civil penalty under this section shall be deposited into the finance administrative account pursuant to section 67-2702, Idaho Code.

(2) The provisions of this section do not apply to any act committed or omitted in good faith in conformity with an order, rule, declaratory ruling, or written interpretative opinion of the director, notwithstanding that the order, rule, declaratory ruling, or written interpretative opinion is later amended, rescinded, or repealed, or determined by judicial or other authority to be invalid for any reason.

(3) The provisions of subsection (1) of this section are additional to, and not alternative to, other provisions of this chapter which authorize the director to issue orders or to take other action on account of a violation of the provisions of this chapter. [I.C., § 26-2729, as added by 1989, ch. 252, § 1, p. 601.]

**26-2730. Prohibited acts — Exceptions — Penalties.** — (1) A person shall not willfully make an untrue statement of a material fact in an application or report filed with the director under this chapter, or willfully omit to state in such an application or report a material fact required to be stated in the application or report.

(2) A person having custody of any of the books, accounts, or other records of a licensee shall not willfully refuse to allow the director, upon request, to inspect or make copies of any of those books, accounts, or other records.

(3) A person shall not, with intent to deceive a director, officer, employee, auditor, or attorney of a licensee, the director or a governmental agency, make a false entry in the books, accounts, or other records of that licensee; omit to make an entry in those books, accounts, or other records which that person is required to make, or alter, conceal, or destroy any of those books, accounts, or other records.

(4) A licensee shall not provide, directly or indirectly, financing assistance to an associate of the licensee.

(5) A licensee shall not provide, directly or indirectly, financing assistance to discharge, or to free other money for use in discharging, in whole or in part, an obligation to an associate of that licensee. This section does not apply to a transaction effected by an associate of a licensee in the normal course of that associate's business involving a line of credit or short-term financing assistance.

(6) A licensee shall not provide, directly or indirectly, financing assistance to a business firm to which an associate of that licensee provides financing assistance, either contemporaneously with, or within one (1) year before or after, the providing of financing assistance by the licensee, if the terms on which the licensee provides financing assistance are less favorable to the licensee than the terms on which the associate provides financing assistance to the business firm. If the financing assistance provided by the associate of the licensee is of a different kind from the financing assistance provided by the licensee, the burden shall be on the licensee to prove that the terms on which the licensee provided financing assistance were at least as favorable to the licensee as the terms on which the associate provided financing assistance to the business firm.

(7) This section does not apply to any of the following:

(a) If the associate is a controlling person of the licensee and is also the only shareholder of the licensee.

(b) If the associate is a subsidiary of the licensee.

(c) A transaction effected by an associate of a licensee in the normal course of that associate's business involving a line of credit or short-term financing assistance.

(8) An associate of a licensee shall not receive, directly or indirectly, from a person to whom that licensee provides financing assistance, compensation in connection with the providing of that financing assistance or anything of value for procuring, influencing, or attempting to procure or influence the licensee's action with respect to the providing of the financing assistance. This section does not apply to the receipt of fees by an associate of a licensee



for bona fide closing services performed by that associate if all of the following are true:

(a) The associate, with the consent and knowledge of the person to whom the financing assistance is provided, is designated by the licensee to perform the services.

(b) The services are appropriate and necessary in the circumstances.

(c) The fees for the services are approved as reasonable by the licensee.

(d) The fees for the services are collected by the licensee on behalf of the associate.

(9) By such orders or rules the director considers necessary and appropriate, he may exempt from the provisions of subsections (4) through (8), either unconditionally or upon specified terms and conditions and for specified periods, a person or transaction or class of persons or transactions, if the director finds that the exemption is in the public interest and that the regulation of the person, transaction or class is not necessary for the purposes of this chapter.

(10) In exempting a person or transaction or class of persons or transactions, the director shall give consideration, as considered appropriate by the director, to conflict of interest provisions of federal law or regulation that may be applicable to that person or transaction governing participants in federal financing programs.

(11) A person who knowingly commits an act which violates the provisions of this chapter shall be fined not more than ten thousand dollars (\$10,000) or shall be imprisoned for not more than five (5) years, or both.

(12) The provisions of this section do not apply to an act committed or omitted in good faith in conformity with an order, rule, declaratory ruling, or written interpretative opinion of the director, notwithstanding that the order, rule, declaratory ruling, or written interpretative opinion is later amended, rescinded, or repealed, or determined by judicial or other authority to be invalid for any reason.

(13) Nothing in this chapter limits the power of the state to punish a person for an act which constitutes a crime under any statute. [I.C., § 26-2730, as added by 1989, ch. 252, § 1, p. 601.]

**26-2731. Construction — Promulgation of rules — Applicability of chapter.** — This chapter shall be liberally construed to accomplish its purposes.

A proceeding to promulgate rules or a proceeding regarding civil penalties under section 26-2729, Idaho Code, shall be subject to the administrative procedures act contained in chapter 52, title 67, Idaho Code.

Except as otherwise provided in this section, the provisions of a licensee's incorporating statute apply to the licensee. If a provision of the licensee's incorporating statute conflicts with any provision of this chapter, this chapter controls. [I.C., § 26-2731, as added by 1989, ch. 252, § 1, p. 601.]

**26-2732. Short title.** — This chapter may be cited as the "Business and Industrial Development Corporation Act." [I.C., § 26-2732, as added by 1989, ch. 252, § 1, p. 601.]

## CHAPTER 28

## MORTGAGE COMPANIES

## SECTION.

- 26-2801. Short Title.
- 26-2802. Definitions.
- 26-2803. Exemptions.
- 26-2804. Unlawful acts.
- 26-2805. Powers and duties of director.
- 26-2806. Remedies available to the department.

## SECTION.

- 26-2807. Reserve accounts.
- 26-2808. Annual statements.
- 26-2809. Notice of transfer.
- 26-2810. Complaints.
- 26-2811. Severability.

**26-2801. Short Title.** — This act may be known and may be cited as the “Mortgage Company Act.” [I.C., § 26-2801, as added by 1990, ch. 225, § 1, p. 600.]

**Compiler’s notes.** The words “this act” refer to S.L. 1990, ch. 225, which is compiled as §§ 26-2801 — 26-2811.

**26-2802. Definitions.** — As used in this chapter:

- (1) “Department” means the department of finance of the state of Idaho.
- (2) “Director” means the director of the department of finance.
- (3) “Mortgage company” means any person who, directly or indirectly is engaged in one (1) of the following with respect to real property located in this state:
  - (a) Makes or offers to make loans secured by liens on real property.
  - (b) Services or offers to service loans secured by liens on real property.
  - (c) Buys or sells promissory notes secured by liens on real property or offers to buy or sell promissory notes secured by liens on real property.
  - (4) “Person” means an individual, sole proprietorship, partnership, corporation or other association of individuals, however organized. [I.C., § 26-2802, as added by 1990, ch. 225, § 1, p. 600.]

**26-2803. Exemptions.** — The provisions of this chapter do not apply to:

- (1) A real estate broker or real estate salesman licensed under chapter 20, title 54, Idaho Code, and engaged in the sale of real estate as a principal vocation if the real estate broker or salesman affiliated with the broker represents either the buyer or the seller.
- (2) Agencies of the United States and of this state and its political subdivisions.
- (3) An owner of real property who offers credit secured by a contract of sale, mortgage or deed of trust on the property sold.
- (4) A loan that is made by a person to an employee of that person if the proceeds of the loan are used to assist the employee in meeting his housing needs.
- (5) Any person licensed or chartered under the laws of this state or the United States as a bank, regulated lender licensed under the Idaho credit code, savings and loan association, credit union, or trust company. [I.C., § 26-2803, as added by 1990, ch. 225, § 1, p. 600.]



**26-2804. Unlawful acts.** — It shall be unlawful on and after July 1, 1990, for any person to act as mortgage company unless the person complies with the provisions of this chapter and rules promulgated pursuant thereto or unless the person is exempted from the provisions of this chapter. [I.C., § 26-2804, as added by 1990, ch. 225, § 1, p. 600.]

**26-2805. Powers and duties of director.** — (1) In addition to the other duties imposed upon the director by law, the director shall:

(a) Conduct investigations and issue subpoenas as necessary to determine whether any person has violated any provision of this chapter or rules promulgated under authority of this chapter.

(b) Conduct examinations of the books and records of mortgage companies and investigations as necessary and proper for the enforcement of the provisions of this chapter and the rules promulgated under the authority of this chapter.

(2) The director may issue orders and promulgate rules that, in the opinion of the director, are necessary to execute, enforce and effectuate the purposes of this chapter. Any rules promulgated shall be promulgated in accordance with chapter 52, title 67, Idaho Code. Any person aggrieved by a final order of the director may obtain judicial review of that order pursuant to chapter 52, title 67, Idaho Code. [I.C., § 26-2805, as added by 1990, ch. 225, § 1, p. 600; am. 1993, ch. 216, § 13, p. 587.]

**Compiler's notes.** Sections 12 and 14 of S.L. 1993, ch. 216 are compiled as §§ 26-2249 and 30-1447, respectively.

**26-2806. Remedies available to the department.** — (1) Whenever it appears to the director that any person has engaged in or is about to engage in any act or practice constituting a violation of any provision of this chapter or any rule or order thereunder, he may in his discretion bring an action in any court of competent jurisdiction, and upon a proper showing for each there shall be granted any or all of the following:

(a) A writ or order restraining or enjoining, temporarily or permanently, any act or practice violating any provision of this chapter or any rule and regulation promulgated pursuant thereto and to enforce compliance under this chapter or any rule or order hereunder.

(b) An order that the person violating any provision of this chapter, rule or order hereunder pay a civil penalty to the department in an amount not to exceed five thousand dollars (\$5,000) for each violation.

(c) An order allowing the director to recover costs which may include investigative expenses and attorney's fees.

(d) An order granting a declaratory judgment that a particular act, practice or method is a violation of the provisions of this chapter.

(e) An order granting other appropriate remedies.

(2) If the director finds that a person has violated or is violating, or that there is reasonable cause to believe that a person is about to violate the provisions of this chapter, the director may order the person to cease and desist from the violations.

(3) Within thirty (30) days after an order is issued under subsection (2) of this section, the person to whom the order is directed may file with the director an application for a hearing on the order. If the director fails to commence a hearing within fifteen (15) business days after that application is filed or within a longer period to which the person consents, the order shall be considered rescinded. Upon the conclusion of the hearing, the director shall affirm, modify, or rescind the order. A person to whom an order is issued under subsection (3) of this section may petition for a judicial review of the order in conformance with the provisions of chapter 52, title 67, Idaho Code. [I.C., § 26-2806, as added by 1990, ch. 225, § 1, p. 600.]

**26-2807. Reserve accounts.** — (1) A mortgage company shall, conspicuously and specifically, disclose to each borrower all contractual provisions relating to reserve accounts, impound accounts, escrow accounts, or any other account maintained for the borrower in order to pay for property taxes, property insurance or private mortgage insurance.

(2) A mortgage company shall not keep more than one hundred twenty per cent (120%) of the amounts necessary on an annual basis to pay expected insurance, taxes or other agreed charges. Upon written notice by a borrower to the director and the mortgage company that reserves being required are excessive, the mortgage company must, within thirty (30) days, either refund the excess or explain to the borrower and the director why the amounts being required are believed to be reasonable and necessary. If, after notice of hearing under chapter 52, title 67, Idaho Code, the director determines that the reserve account, impound account, escrow account or any other similar account maintained for a borrower is not reasonable, the director may order the mortgage company to reduce its reserve requirements for such accounts. In any proceeding under this section the burden shall be upon the mortgage company to prove that the amounts required for such reserve accounts are based upon actual and reasonably anticipated charges. [I.C., § 26-2807, as added by 1990, ch. 225, § 1, p. 600.]

**26-2808. Annual statements.** — (1) A mortgage company shall deliver to the borrower at least annually during the month of January, a statement of the borrower's account showing the date and amount of all payments made or credited to the account for the immediately preceding twelve (12) month period, and the total unpaid balance. The statement shall also clearly describe in full the amounts received on all tax and insurance reserve accounts, the disposition of such funds, and the amounts held in reserve in such accounts. The statement shall clearly indicate any penalty or interest payments because of failure to pay taxes on time. A fee shall not be charged the borrower for the statement.

(2) A borrower may request additional statements from a mortgage company at any time, and the mortgage company may require a fee to provide each such statement. The statement shall be delivered to the borrower within thirty (30) days after receipt of a written request from the borrower. [I.C., § 26-2808, as added by 1990, ch. 225, § 1, p. 600.]



**26-2809. Notice of transfer.** — The mortgage company shall provide notice to the borrower within fifteen (15) days after any sale or assignment of the promissory note of the borrower to another person in which the mortgage company does not retain the loan servicing. A mortgage company purchasing or receiving assignment of the promissory note with servicing shall provide to the borrower within thirty (30) days a written statement describing policies relating to the reserve account. [I.C., § 26-2809, as added by 1990, ch. 225, § 1, p. 600.]

**26-2810. Complaints.** — (1) If requested by the director for a specified period of time, the mortgage company shall furnish to the director a copy of all written complaints made to the mortgage company by borrowers, together with a copy of any and all written responses by the mortgage company to the borrower. The borrower complaint and mortgage company responses shall be furnished to the director within thirty (30) days of the receipt of the borrower's complaint by the mortgage company. [I.C., § 26-2810, as added by 1990, ch. 225, § 1, p. 600.]

**26-2811. Severability.** — The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of remaining portions of this act. [I.C., § 26-2811, as added by 1990, ch. 225, § 1, p. 600.]

**Compiler's notes.** The words "this act" refer to S.L. 1990, ch. 225, which is compiled as §§ 26-2801 — 26-2811.

## CHAPTER 29

### MONEY TRANSMISSION

#### SECTION.

- 26-2901. Short title.
- 26-2902. Definitions.
- 26-2903. License required.
- 26-2904. Exemptions.
- 26-2905. License qualifications.
- 26-2906. Permissible investments.
- 26-2907. License application.
- 26-2908. Bond or other security device.
- 26-2909. Application fee.
- 26-2910. Issuance of license.
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#### SECTION.

- 26-2917. Suspension or revocation of licenses.
- 26-2918. Authorized representative contracts.
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- 26-2921. Licensee liability.
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- 26-2926. Promulgation of rules.
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- 26-2928. Appointment of director as agent for service of process.

**26-2901. Short title.** — This chapter may be known and cited as the “Idaho Money Transmitters Act.” [I.C., § 26-2901, as added by 1994, ch. 410, § 1, p. 1282.]

**Compiler’s notes.** Section 2 of S.L. 1994, ch. 410 provided: “This act shall be in full force and effect on and after October 1, 1994. Every person engaged in activities within this state encompassed in this chapter at the time of the chapter’s adoption shall file an application in accordance with the provisions of this

chapter within three months after the date this act becomes effective. No person shall be deemed to be in violation of the provisions of this act for operating without a license if he files an application within such three month period, unless and until such application is denied.”

**26-2902. Definitions.** — Unless otherwise indicated, the following definitions shall apply to the terms set forth below wherever such terms are used in this chapter:

(1) “Applicant” means a person filing an application for a license under the provisions of this chapter.

(2) “Authorized representative” means an entity designated by the licensee under the provisions of this chapter to sell or issue payment instruments or engage in the business of transmitting money on behalf of a licensee.

(3) “Control” means ownership of, or the power to vote, twenty-five percent (25%) or more of the outstanding voting securities of a licensee or controlling person.

(4) “Controlling person” means any person in control of a licensee. On application the director shall determine whether a particular person qualifies as a controlling person. The director may waive any or all requirements of this chapter pertaining to a controlling person for good cause shown.

(5) “Department” means the Idaho department of finance.

(6) “Director” means the director of the department of finance.

(7) “Executive officer” means the licensee’s president, chief executive officer, treasurer, chief financial officer and any other person who performs similar functions.

(8) “Key shareholder” means any person, or group of persons acting in concert, who is the owner of twenty-five percent (25%) or more of any class of an applicant’s stock.

(9) “Licensee” means a person licensed under the provisions of this chapter.

(10) “Material litigation” means any litigation that, according to generally accepted accounting principles, is deemed significant to the financial health of a business and would be required to be referenced in the business’s annual audited financial statements, report to shareholders or similar documents.

(11) “Money transmission” means the sale or issuance of payment instruments or engaging in the business of receiving money for transmission or the business of transmitting money within the United States or to locations outside the United States by any and all means including, but not limited to, payment instrument, wire, facsimile or electronic transfer.

(12) “Outstanding payment instrument” means any payment instrument issued by the licensee which has been sold in the United States directly by



the licensee or by an authorized representative of the licensee, which has been reported to the licensee as having been sold and which has not yet been paid by or for the licensee.

(13) "Payment instrument" means any check, draft, money order, traveler's check or other instrument or written order for the transmission or payment of money, sold or issued to one (1) or more persons, whether or not such instrument is negotiable. The term "payment instrument" does not include any credit card voucher, any letter of credit or any instrument which is redeemable by the issuer in goods or services.

(14) "Permissible investments" means:

(a) Cash;

(b) Certificate of deposit or other debt obligations of a financial institution, either domestic or foreign;

(c) Bills of exchange or time drafts drawn on and accepted by a commercial bank, otherwise known as bankers' acceptances, which are eligible for purchase by member banks of the federal reserve system;

(d) Any investment bearing a rating of one (1) of the three (3) highest grades as defined by a nationally recognized organization that rates such securities;

(e) Investment securities that are obligations of the United States, its agencies or instrumentalities, or obligations that are guaranteed fully as to principal and interest of the United States, or any obligations of any state, municipality or any political subdivision thereof;

(f) Shares in a money market mutual fund, interest-bearing bills or notes or bonds, debentures or stock traded on any national securities exchange or on a national over-the-counter market, or mutual funds primarily composed of such securities;

(g) Any demand borrowing agreement or agreements made to a corporation or a subsidiary of a corporation whose capital stock is listed on a national exchange; or

(h) Receivables which are due to a licensee from its authorized representatives pursuant to a contract described in section 26-2918, Idaho Code, which are not past due or doubtful of collection; or any other investments approved by the director.

(15) "Person" means any individual, partnership, association, joint stock association, limited liability company, trust or corporation.

(16) "State" means the state of Idaho. [I.C., § 26-2902, as added by 1994, ch. 410, § 1, p. 1282.]

**26-2903. License required.** — (1) On or after the effective date of this act, no person except a person exempt pursuant to the provisions of section 26-2904, Idaho Code, shall engage in the business of money transmission without a license as provided in accordance with the provisions of this chapter.

(2) A licensee may conduct its business in this state at one (1) or more locations, directly or indirectly owned, or through one (1) or more authorized representatives, or both, pursuant to the single license granted to the licensee.

(3) The director may permit multiple corporations, which are directly or indirectly commonly controlled, to engage in activities under the provisions of this chapter, pursuant to a single bond or other security device in satisfaction of the requirements of section 26-2908, Idaho Code. [I.C., § 26-2903, as added by 1994, ch. 410, § 1, p. 1282.]

**26-2904. Exemptions.** — (1) This chapter shall not apply to:

- (a) The United States or any department, agency or instrumentality of the United States;
- (b) The United States post office;
- (c) The state or any political subdivision of the state; and
- (d) Banks, credit unions, savings and loan associations, savings banks or mutual banks organized under the laws of any state or the United States, provided that they do not issue or sell payment instruments through authorized delegates who are not banks, credit unions, savings and loan associations, savings banks or mutual banks; and

(2) Authorized representatives of a licensee, acting within the scope of authority conferred by a written contract conforming to the requirements of section 26-2918, Idaho Code, shall not be required to obtain a license pursuant to this chapter. [I.C., § 26-2904, as added by 1994, ch. 410, § 1, p. 1282.]

**26-2905. License qualifications.** — (1) Each licensee licensed under the provisions of this chapter shall at all times have a net worth of not less than fifty thousand dollars (\$50,000), calculated in accordance with generally accepted accounting principles. Licensees engaging in money transmission at more than one (1) location or through authorized representatives shall have an additional net worth of twenty-five thousand dollars (\$25,000) per location or authorized representative located in the state, as applicable, to a maximum of two hundred fifty thousand dollars (\$250,000).

(2) Every corporate applicant, at the time of filing of an application for a license under the provisions of this chapter and at all times after a license is issued, shall be in good standing in the state of its incorporation. All noncorporate applicants shall, at the time of the filing of an application for a license under the provisions of this chapter and at all times after a license is issued, have all necessary registrations or qualifications to do business in this state. [I.C., § 26-2905, as added by 1994, ch. 410, § 1, p. 1282.]

**26-2906. Permissible investments.** — Each licensee licensed under the provisions of this chapter must at all times possess permissible investments having an aggregate market value, calculated in accordance with generally accepted accounting principles, of not less than the aggregate face amount of all outstanding payment instruments issued or sold by the licensee in the United States. This requirement may be waived by the director if the dollar volume of a licensee's outstanding payment instruments does not exceed the bond or other security devices posted by the licensee pursuant to section 26-2908, Idaho Code. Permissible investments, even if commingled with other assets of the licensee, shall be deemed by



operation of law to be held in trust for the benefit of the purchasers and holders of the licensee's outstanding payment instruments in the event of the bankruptcy of the licensee, and shall be immune from attachment by creditors or judgment holders. [I.C., § 26-2906, as added by 1994, ch. 410, § 1, p. 1282; am. 1999, ch. 274, § 1, p. 688.]

**Sec. to sec. ref.** This section is referred to in §§ 26-2908 and 26-2911.

**26-2907. License application.** — Each application for a license under the provisions of this chapter shall be made in writing, under oath, and in a form prescribed by the director. Each application shall contain:

(1) For all applicants:

- (a) The exact name of the applicant, the applicant's principal address, any fictitious or trade name used by the applicant in the conduct of its business and the location of the applicant's business records;
- (b) The history of the applicant's material litigation for the five (5) year period prior to the date of the application and any nontraffic related criminal convictions or withheld judgments;
- (c) A description of the activities conducted by the applicant and a history of operations;
- (d) A description of the business activities in which the applicant seeks to be engaged in this state;
- (e) A list identifying the applicant's proposed authorized representatives in this state;
- (f) A sample authorized representative contract, if applicable;
- (g) A sample form of payment instrument, if applicable;
- (h) The location(s) at which the applicant and its authorized representatives, if any, propose to conduct the licensed activities in this state; and
- (i) The name and address of the clearing bank or banks on which the applicant's payment instruments will be drawn or through which such payment instruments will be payable.

(2) If the applicant is a corporation, the applicant must also provide:

- (a) The date of the applicant's incorporation and state of incorporation;
- (b) A certificate of good standing from the state in which the applicant was incorporated;
- (c) A description of the corporate structure of the applicant, including the identity of any parent or subsidiary of the applicant, and the disclosure of whether any parent or subsidiary is publicly traded on any stock exchange;
- (d) The name, business and residence address, and employment history for the past five (5) years of the applicant's executive officers and the officer(s) or manager(s) who will be in charge of the applicant's activities to be licensed hereunder;
- (e) The name, business and residence address, and employment history for the five (5) year period preceding the date of the application of any key shareholder of the applicant;
- (f) The history of material litigation and nontraffic related criminal convictions or withheld judgments for the five (5) year period preceding

the date of the application of every current director, executive officer, or key shareholder of the applicant;

(g) A copy of the applicant's most recent audited financial statement, including balance sheet, statement of income or loss, statement of changes in shareholder equity and statement of changes in financial position, and, if available, the applicant's audited financial statements for the immediately preceding two (2) year period. However, if the applicant is a wholly owned subsidiary of another corporation, the applicant may submit either the parent corporation's consolidated audited financial statements for the current year and for the immediately preceding two (2) year period or the parent corporation's form 10K reports filed with the United States securities and exchange commission for the prior three (3) years may be submitted with the applicant's unaudited financial statements. If the applicant is a wholly owned subsidiary of a corporation having its principal place of business outside the United States, similar documentation filed with the parent corporation's non-United States regulator may be submitted to satisfy this provision. In the event any applicant does not otherwise obtain audited financial statements, such applicant shall, in lieu of audited financial statements required in this section, furnish the director with federal income tax returns covering the required periods together with copies of such unaudited, compiled, or reviewed financial statements as the applicant shall have prepared or obtained for other purposes, including, without limitation, the most recent financial statements, if any, furnished to the applicant's bank or other lending institution; and

(h) Copies of all filings, if any, made by the applicant with the United States securities and exchange commission, or with a similar regulator in a country other than the United States, within the year preceding the date of filing of the application.

(3) If the applicant is not a corporation, the applicant must also provide:

(a) The name, business and residence address, personal financial statement and employment history, for the five (5) year period prior to the date of the application, of each principal of the applicant and the name, business and residence address, and employment history for the past five (5) years of any other person or persons who will be in charge of the applicant's activities to be licensed hereunder;

(b) The place and date of the applicant's registration or qualification to do business in this state;

(c) The history of material litigation for the five (5) year period prior to the date of the application and any nontraffic related criminal convictions or withheld judgments for each individual having any ownership interest in the applicant and each individual who exercises supervisory responsibility with respect to the applicant's activities; and

(d) Copies of the applicant's audited financial statements, including balance sheet, statement of income or loss, and statement of changes in financial position, for the current year and, if available, for the immediately preceding two (2) year period. In the event any applicant does not otherwise obtain audited financial statements, such applicant shall, in



lieu of audited financial statements required in this section, furnish the director with federal income tax returns covering the required periods together with copies of such unaudited, compiled or reviewed financial statements as the applicant shall have prepared or obtained for other purposes, including, without limitation, the most recent financial statements, if any, furnished to applicant's bank or other lending institution.

(4) The director is authorized, for good cause shown, to waive any requirement of this section with respect to any license application or to permit a license applicant to submit substituted information in its license application in lieu of the information required in this section. [I.C., § 26-2907, as added by 1994, ch. 410, § 1, p. 1282.]

**Sec. to sec. ref.** This section is referred to in § 26-2914.

**26-2908. Bond or other security device.** — (1) Each application must be accompanied by a surety bond, irrevocable letter of credit or such other similar security device, hereinafter referred to as security device, acceptable to the director in the amount of ten thousand dollars (\$10,000). If the applicant proposes to engage in business under the provisions of this chapter at more than one (1) location, through authorized representatives or otherwise, then the amount of the security device will be increased by five thousand dollars (\$5,000) per location, up to a maximum of five hundred thousand dollars (\$500,000). The security device shall be in a form satisfactory to the director and shall run to the state for the benefit of any claimants against the licensee to secure the faithful performance of the obligations of the licensee with respect to the receipt, handling, transmission, and payment of money in connection with either the sale and issuance of payment instruments and the transmission of money. In the case of a bond, the aggregate liability of the surety in no event shall exceed the principal sum of the bond. Claimants against the licensee or its authorized representatives may themselves bring suit directly on the security device or the director may bring suit on behalf of such claimants, either in one (1) action or in successive actions. Permissible investments required in section 26-2906, Idaho Code, may be pledged as collateral for the surety bond, irrevocable letter of credit, or similar security device required in this section.

(2) In lieu of such security device or of any portion of the principal thereof, as required in this section, the licensee may deposit with the director, or with such banks in this state as the licensee may designate and the director may approve, cash, interest-bearing stocks and bonds, notes, debentures, or other obligations of the United States or any agency or instrumentality thereof, or guaranteed by the United States, or of this state, or of a city, county, town, school district or instrumentality of this state, or guaranteed by this state, to an aggregate amount, based upon principal amount or market value, whichever is lower, of not less than the amount of the security device or portion thereof. The securities or cash, or both, shall be deposited as aforesaid and held to secure the same obligations as would the security device, but the depositor shall be entitled to receive all interest and dividends thereon, shall have the right, with the approval of the director, to

substitute other securities for those deposited, and shall be required to do so on written order of the director made for good cause shown.

(3) The security device shall remain in effect until cancellation, which may occur only after thirty (30) days' written notice to the director. Cancellation shall not affect any liability incurred or accrued during said period.

(4) The security device or deposit in lieu thereof shall remain in place for a period of two (2) years from the date the licensee ceases money transmission operations in this state. Notwithstanding the preceding sentence, the director shall permit the security device or deposit in lieu thereof to be reduced or eliminated prior to the expiration of the two (2) year post-cessation period to the extent that the amount of the licensee's payment instruments outstanding in this state are reduced. The director shall also permit a licensee to substitute a letter of credit or such other form of security device acceptable to the director for the security device, or deposit in lieu thereof, in place at the time the licensee ceases money transmission operations in this state.

(5) Two (2) years following the cessation of money transmission operations in this state, a former licensee has the option to transfer any funds held to pay outstanding payment instruments to the state tax commission, who shall administer said funds in accordance with chapter 5, title 14, Idaho Code. [I.C., § 26-2908, as added by 1994, ch. 410, § 1, p. 1282.]

**Sec. to sec. ref.** This section is referred to in §§ 26-2903 and 26-2906.

**26-2909. Application fee.** — Each application must be accompanied by a nonrefundable application fee in the amount of one hundred dollars (\$100) for the license. The application fee shall also constitute the license fee for the applicant's first year of activities if the license is granted. All fees, fines, examination and miscellaneous charges provided for in accordance with the provisions of this chapter shall be paid to the director and shall be deposited into the finance administrative account pursuant to section 67-2702, Idaho Code. [I.C., § 26-2909, as added by 1994, ch. 410, § 1, p. 1282.]

**26-2910. Issuance of license.** — (1) Upon the filing of a complete application, the director shall investigate the financial condition and responsibility, financial and business experience, character and general fitness of the applicant. The director may conduct an on-site investigation of the applicant, the actual cost of which shall be borne by the applicant. If the director finds that the applicant's business will be conducted honestly, fairly, and in a manner commanding the confidence and trust of the community, and that the applicant has fulfilled the requirements imposed in this chapter and has paid the required license fee, the director shall issue a license to the applicant authorizing the applicant to engage in the licensed activities in this state for a term of one (1) year. If these requirements have not been met, the director shall deny the application in writing setting forth the reasons for the denial.



(2) The director shall approve or deny every application for an original license within one hundred eighty (180) days from the date a complete application is submitted, which period may be extended by the written consent of the applicant. The director shall notify the applicant of the date when the application is deemed complete. In the absence of approval or denial of the application, or consent to the extension of the one hundred eighty (180) day period, the application is deemed approved and the director shall issue the license effective as of the first day after the one hundred eighty (180) day or extended period has elapsed.

(3) Any applicant aggrieved by a denial issued by the director under the provisions of this section may at any time within thirty (30) days from the date of receipt of written notice of the denial contest the denial by serving a response on the director. The director shall set a date for a hearing not later than sixty (60) days after service of the response, unless a later date is set with the consent of the denied applicant. [I.C., § 26-2910, as added by 1994, ch. 410, § 1, p. 1282.]

**26-2911. Renewal of license and annual report.** — (1) Each licensee shall file with the director an annual report, in a form prescribed by the director, which form shall be sent by the director to each licensee no later than three (3) months immediately preceding the thirtieth day of June of each year, or as the director in his discretion, may determine. The licensee must include each of the following in its annual renewal report:

(a) A copy of its most recent audited consolidated annual financial statement, including balance sheet, statement of income or loss, statement of changes in shareholder's equity and statement of changes in financial position; or, in the case of a licensee that is a wholly owned subsidiary of a parent corporation, the consolidated audited annual financial statement of the parent corporation may be filed with the licensee's unaudited annual financial statement. In the event any licensee does not otherwise obtain audited financial statements, such licensee shall, in lieu of audited financial statements required in this section, furnish the director with federal income tax returns covering the required periods together with copies of such unaudited, compiled or reviewed financial statements as the licensee shall have prepared or obtained for other purposes, including, without limitation, the most recent financial statements, if any, furnished to licensee's bank or other lending institution.

(b) For the most recent quarter for which data is available prior to the date of the filing of the renewal application, but in no event more than one hundred twenty (120) days prior to the renewal date, the licensee must provide the number of payment instruments sold by the licensee in the state, the dollar amount of those instruments and the dollar amount of those instruments currently outstanding.

(c) Any material changes in any of the information submitted by the licensee on its original application which have not previously been reported to the director on any other report required to be filed under the provisions of this chapter.

(d) A list of the licensee's permissible investments; and if an audited financial statement has not been provided, the licensee shall provide a certification by an independent certified public accountant that the licensee has complied with the provisions of section 26-2906, Idaho Code.

(e) A list of the locations within this state at which business regulated by the provisions of this chapter is being conducted by either the licensee or its authorized representative.

(2) A licensee that has not filed an annual report by the renewal filing deadline and has not been granted an extension of time to do so by the director shall be notified by the director, in writing, that a hearing will be scheduled at which time the licensee will be required to show cause why its license should not be suspended pending compliance with this requirement. [I.C., § 26-2911, as added by 1994, ch. 410, § 1, p. 1282.]

**26-2912. Extraordinary reporting requirements.** — Within fifteen (15) days of the occurrence of any one (1) of the events listed below, a licensee shall file a written report with the director describing such event:

(1) The filing for bankruptcy or reorganization by the licensee;

(2) The institution of revocation or suspension proceedings against the licensee by any state or government authority with regard to the licensee's money transmission activities;

(3) Any felony indictment, complaint or information of the licensee or any of its key officers or directors; or

(4) Any felony conviction of the licensee or any of its key officers or directors. [I.C., § 26-2912, as added by 1994, ch. 410, § 1, p. 1282.]

**26-2913. Changes in control of a license.** — (1) Within fifteen (15) days of a change or acquisition of control of a licensee that is a publicly traded corporation or is a direct or indirect subsidiary of a publicly traded corporation, the licensee shall provide notice of such event to the director in writing.

(2) Licensees other than publicly traded corporations or direct or indirect subsidiaries of publicly traded corporations must notify the director in writing thirty (30) days prior to a change of control. [I.C., § 26-2913, as added by 1994, ch. 410, § 1, p. 1282.]

**26-2914. Examinations.** — (1) The director may conduct examinations of a licensee. Should the director conclude that an on-site examination of a licensee is necessary, the licensee, subject to the provision of subsection (3) of this section, shall pay all the actual costs of such examination. If the director determines, based on the licensee's financial statements and past history of operations in the state, that an on-site examination is unnecessary, the on-site examination may be conducted in conjunction with examinations to be performed by representatives of agencies of another state or states. The director, in lieu of an on-site examination, may accept the examination report of an agency of another state, or a report prepared by an independent accounting firm, and reports so accepted are considered for all purposes as an official report of the director.



(2) The director may request financial data from a licensee in addition to that required in section 26-2907, Idaho Code, or conduct an on-site examination of any authorized representative or location of a license within this state without prior notice to the authorized representative or licensee if the director has a reasonable basis to believe that the licensee or authorized representative is in violation of the provisions of this chapter.

(3) When the director examines a licensee or an authorized representative within this state, the licensee or authorized representative shall pay all the actual costs of such examination, up to a maximum of one thousand dollars (\$1,000). [I.C., § 26-2914, as added by 1994, ch. 410, § 1, p. 1282.]

**26-2915. Maintenance of records.** — (1) Each licensee shall make, keep, and preserve the following books, accounts and other records for a period of three (3) years:

- (a) A record or records of payment instruments sold;
- (b) A general ledger containing all asset, liability, capital, income and expense accounts, which general ledger shall be posted at least monthly;
- (c) Settlement sheets, if received from authorized representatives;
- (d) Bank statements and bank reconciliation records;
- (e) Records of outstanding payment instruments;
- (f) Records of each payment instrument paid within the three (3) year period; and
- (g) A list of the names and addresses of all of the licensee's authorized representatives, as well as copies of each authorized representative's contract.

(2) Maintenance of such documents as are required in this section in a photographic or other similar form shall constitute compliance with the provisions of this section.

(3) Records may be maintained at a location other than at a location within this state so long as they are made accessible to the director on fifteen (15) days' written notice. [I.C., § 26-2915, as added by 1994, ch. 410, § 1, p. 1282.]

**26-2916. Confidentiality of data submitted to the director.** —

(1) All information or reports obtained by the director from an applicant, licensee or authorized representative, whether obtained through reports, applications, examinations, audits, investigation, or otherwise including, but not limited to:

- (a) All information contained in or related to examination, investigation, operating, or condition reports reported by, on behalf of, or for the use of the director; or
- (b) Financial statements, balance sheets, or authorized representative information; are confidential trade secrets and may not be disclosed or distributed outside the department in accordance with the provisions of section 9-340(4) (a), Idaho Code, by the director or any officer or employee of the department.

(2) The director, however, may provide for the release of information to representatives of state or federal agencies who state in writing that they shall maintain the confidentiality of such information if:

(a) The licensee provides consent prior to the release; or

(b) The director finds that the release is reasonably necessary for the protection of the public and in the interests of justice, and the licensee has been given prior notice by the director of its intent to release such information.

(3) Nothing in this section shall prohibit the director from releasing to the public a list of persons licensed under the provisions of this chapter or to release aggregated financial data on such licensees.

(4) The director may release information without prior notice to a law enforcement agency of this state or the United States in connection with a criminal referral made under this chapter or other law. [I.C., § 26-2916, as added by 1994, ch. 410, § 1, p. 1282; am. 1997, ch. 60, § 3, p. 111.]

**Compiler's notes.** Section 2 of S.L. 1997, ch. 60 is compiled as § 9-340 (now repealed).

**26-2917. Suspension or revocation of licenses.** — After notice and hearing, the director may suspend or revoke a licensee's license if the director finds that:

(1) Any fact or condition exists that, if it had existed at the time when the licensee applied for a license, would have been grounds for denying such application;

(2) The licensee's net worth becomes inadequate and the licensee, after ten (10) days' written notice from the director, fails to take such steps as the director deems necessary to remedy such deficiency;

(3) The licensee violates any provisions of this chapter or any rule or order of the director under the provisions of this chapter;

(4) The licensee is conducting its business in an unsafe or unsound manner;

(5) The licensee is insolvent;

(6) The licensee has suspended payment of its obligations, has made an assignment for the benefit of its creditors, or has admitted in writing its inability to pay its debts as they become due;

(7) The licensee has applied for an adjudication of bankruptcy, reorganization, arrangement or other relief under any bankruptcy;

(8) The licensee refuses to permit the director to make any examination authorized in this chapter; or

(9) The licensee wilfully fails to make any report required in this chapter. [I.C., § 26-2917, as added by 1994, ch. 410, § 1, p. 1282.]

**26-2918. Authorized representative contracts.** — Licensees desiring to conduct licensed activities through authorized representatives shall authorize such representative to operate pursuant to an express written contract, which shall provide the following:

(1) That the licensee appoints the person as its representative with authority to engage in money transmission on behalf of the licensee;



(2) That neither a licensee nor an authorized representative may authorize subrepresentatives without the written consent of the director;

(3) That licensees are subject to supervision and regulation by the director;

(4) An acknowledgement that the authorized representative consents to the director's inspection, with or without prior notice to the licensee or authorized representative(s), of the books and records of authorized representative(s) of the licensee when the director has a reasonable basis to believe that the licensee or authorized representative is in violation of the provisions of this chapter; and

(5) That authorized representatives are under a duty to act only as authorized under the contract with the licensee and that an authorized representative that exceeds its authority is subject to cancellation of its contract and disciplinary action by the director. [I.C., § 26-2918, as added by 1994, ch. 410, § 1, p. 1282.]

**Sec. to sec. ref.** This section is referred to in § 26-2902.

**26-2919. Authorized representative conduct.** — (1) An authorized representative shall not make any fraudulent or false statement or misrepresentation to a licensee or to the director.

(2) All money transmission or sale or issuance of payment instrument activities conducted by authorized representatives shall be strictly in accordance with the licensee's written procedures provided to the authorized representative.

(3) An authorized representative shall remit all money owing to the licensee in accordance with the terms of the contract between the licensee and the authorized representative.

(4) All funds, less fees, received by an authorized representative of a licensee from the sale or delivery of a payment instrument issued by a licensee or received by an authorized representative for transmission shall, from the time such funds are received by such authorized representative until such time when the funds or an equivalent amount are remitted by the authorized representative to the licensee, constitute trust funds owned by and belonging to the licensee. If an authorized representative commingles any such funds with any other funds owned or controlled by the authorized representative, all commingled proceeds and other property shall be impressed with a trust in favor of the licensee in an amount equal to the amount of the proceeds due the licensee.

(5) An authorized representative shall report to the licensee the theft or loss of payment instruments within twenty-four (24) hours from the time he knew or should have known of such theft or loss. [I.C., § 26-2919, as added by 1994, ch. 410, § 1, p. 1282.]

**26-2920. Revocation or suspension of authorized representatives.** — (1) If, after notice and a hearing, the director finds that any

authorized representative of a licensee or any director, officer, employee, or controlling person of such authorized representative:

(a) Has violated any provision of this chapter, or of any rule or order issued under the provisions of this chapter;

(b) Has engaged or participated in any unsafe or unsound act with respect to the business of selling or issuing payment instruments of the licensee or the business of money transmission; or

(c) Has made or caused to be made in any application or report filed with the director or in any proceeding before the director, any statement which was at the time and in the circumstances under which it was made, false or misleading with respect to any material fact, or has omitted to state in any such application or report any material fact which is required to be stated therein, the director may issue an order suspending or barring such authorized representative from continuing to be or becoming an authorized representative of any licensee during the period for which such order is in effect. Upon issuance of such order, the licensee shall terminate its relationship with such authorized representative according to the terms of the order.

(2)(a) Any authorized representative to whom an order is issued under the provisions of this section may apply to the director to modify or rescind such order. The director shall not grant such application unless the director finds that it is in the public interest to do so and that it is reasonable to believe that such person will, if and when such person is permitted to resume being an authorized representative of a licensee, comply with all applicable provisions of this chapter and of any rule and order issued under the provisions of this chapter.

(b) The right of any authorized representative to whom an order is issued under the provisions of this section to petition for judicial review of such order shall not be affected by the failure of such persons to apply to the director to modify or rescind the order. [I.C., § 26-2920, as added by 1994, ch. 410, § 1, p. 1282.]

**26-2921. Licensee liability.** — A licensee's [licensee's] liability to any person for a money transmission conducted on that person's behalf by the licensee or the licensee's authorized representative shall be limited to the amount of money transmitted or the face amount of the payment instrument purchased. [I.C., § 26-2921, as added by 1994, ch. 410, § 1, p. 1282.]

**Compiler's notes.** The bracketed word "licensee's" was inserted by the compiler.

**26-2922. Hearings — Procedures.** — The provisions of the Idaho administrative procedure act, chapter 52, title 67, Idaho Code, shall apply to any hearing afforded pursuant to the provisions of this chapter. [I.C., § 26-2922, as added by 1994, ch. 410, § 1, p. 1282.]

**26-2923. Civil penalties.** — (1) If, after notice and hearing, the director finds that a person has violated the provisions of this chapter or a rule adopted under the provisions of this chapter, the director may order the



person to pay to the director a civil penalty in an amount specified by the director, not to exceed one thousand dollars (\$1,000) for each violation or, in the case of a continuing violation, one thousand dollars (\$1,000) for each day that the violation continues, but not to exceed twenty-five thousand dollars (\$25,000) in the aggregate. The provisions of the Idaho administrative procedure act, chapter 52, title 67, Idaho Code, shall apply to such hearing.

(2) The director, in his discretion, is authorized to compromise, settle, and collect civil penalties with any person for violations of any provision of this chapter, or of any rule or order issued or promulgated pursuant to the provisions of this chapter. [I.C., § 26-2923, as added by 1994, ch. 410, § 1, p. 1282.]

**26-2924. Enforcement.** — (1) If it appears to the director that any person has committed or is about to commit a violation of any provision of this chapter or of any rule or order of the director, the director may:

(a) Issue a cease and desist order ordering such person to cease and desist violating or continuing to violate any provision of this chapter or any rule or order issued in accordance with this chapter; or

(b) Apply to the district court for an order enjoining such person from violating or continuing to violate any provision of this chapter or any rule or order and for injunctive or such other relief as the nature of the case may require.

(2) The director may enter into consent orders at any time with any person to resolve any matter arising under the provisions of this chapter. A consent order must be signed by the person to whom it is issued or a duly authorized representative, and must indicate agreement to the terms contained therein. A consent order need not constitute an admission by any person that any provision of this chapter or any rule or order promulgated or issued thereunder has been violated nor need it constitute a finding by the director that such person has violated any provision of this chapter or any rule or order promulgated or issued thereunder.

(3) Notwithstanding the issuance of a consent order, the director may seek civil or criminal penalties or compromise civil penalties concerning matters encompassed by the consent order unless the consent order by its terms expressly precludes the director from so doing. [I.C., § 26-2924, as added by 1994, ch. 410, § 1, p. 1282.]

**26-2925. Criminal penalties.** — Any person who knowingly and wilfully violates any provision of this chapter is guilty of a felony. [I.C., § 26-2925, as added by 1994, ch. 410, § 1, p. 1282.]

**Cross ref.** Penalty for felony when not otherwise provided, § 18-112.

**26-2926. Promulgation of rules.** — All rules promulgated by the director pursuant to authority conferred in this chapter will be in accordance with the Idaho administrative procedure act, chapter 52, title 67, Idaho Code. In addition thereto, at the time the director files a notice of proposed adoption, amendment or repeal of a rule for public comment, a

copy of said notice will be sent by regular United States mail, postage prepaid, to all then current licensees and applicants for licenses under the provisions of this chapter. [I.C., § 26-2926, as added by 1994, ch. 410, § 1, p. 1282.]

**26-2927. Severability.** — Should any provision, sentence, clause, section or part of this act for any reason be held unconstitutional, illegal or invalid, such unconstitutionality, illegality, or invalidity shall not affect or impair any of the remaining provisions, sentences, clauses, sections or parts of this act. It is hereby declared to be the intention of this legislature that this act would have been adopted had such unconstitutional, illegal or invalid sentence, clause, section or part thereof not been included herein. [I.C., § 26-2927, as added by 1994, ch. 410, § 1, p. 1282.]

**26-2928. Appointment of director as agent for service of process.** — (1) Any licensee, authorized representative or other person who knowingly engages in business activities that are regulated under the provisions of this chapter, with or without filing an application, is deemed to have done both the following:

(a) Consented to the jurisdiction of the courts of this state for all actions arising under the provisions of this chapter; and

(b) Appointed the director as his lawful agent for the purpose of accepting service of process in any action, suit or proceeding that may arise under the provisions of this chapter.

(2) Within three (3) business days after service of process upon the director, the director shall transmit by certified mail copies of all lawful processes accepted by the director as an agent to that person at his last known address. Service of process shall be considered complete three (3) business days after the director deposits copies of the documents in the United States mail. [I.C., § 26-2928, as added by 1994, ch. 410, § 1, p. 1282.]

**Compiler's notes.** Section 2 of S.L. 1994, ch. 410 provided: "This act shall be in full force and effect on and after October 1, 1994. Every person engaged in activities within this state encompassed in this chapter at the time of the chapter's adoption shall file an application in accordance with the provisions of this

chapter within three months after the date this act becomes effective. No person shall be deemed to be in violation of the provisions of this act for operating without a license if he files an application within such three month period, unless and until such application is denied."

## CHAPTER 30

### UNIVERSITY DEBIT CARD ACT

#### SECTION.

26-3001. Title and scope.

26-3002. Definitions.

26-3003. Debit card authority and bond.

#### SECTION.

26-3004. Exemption from bank act and prohibitions.



**26-3001. Title and scope.** — (1) This chapter shall be known and cited as the “University Debit Card Act.”

(2) This chapter is intended to grant authority to and set forth the terms and conditions under which colleges and universities located in Idaho may offer debit card programs to their student bodies, faculty and staff. [I.C., § 26-3001, as added by 1995, ch. 133, § 1, p. 579.]

**26-3002. Definitions.** — As used in this chapter and unless the context otherwise requires:

(1) “Debit card transaction” means the purchase of either goods or services, or both, whereby payment is made through the means of a point of sale or other payment system maintained by the college or university which results in a charge to a credit balance maintained by a registered student or a member of its faculty or staff with the college or university business office.

(2) “University debit card” means a card issued by a college or university located in this state to a registered student or a member of its faculty or staff which permits such persons to draw against funds on deposit with the college or university business office for the purchase of goods or services.

(3) “University debit card program” means a financial arrangement whereby a college or university allows a registered student or a member of its faculty or staff to place funds on deposit with the college or university business office against which such persons may draw, through a debit card transaction, for the purchase of either goods or services or both. [I.C., § 26-3002, as added by 1995, ch. 133, § 1, p. 579.]

**26-3003. Debit card authority and bond.** — (1) Any college or university located in Idaho may make available to its student body and to members of its faculty and staff a university debit card program. A debit card transaction may be used only to purchase goods or services from the college or university or through its approved vendor located on the principal campus of the college or university, which goods or services traditionally are provided by a college or university to its students, faculty or staff.

(2) A surety bond in a form approved by the governing authority of the college or university in the amount of ten thousand dollars (\$10,000) shall be maintained for each employee of the college or university with access to the funds maintained in the university debit card program. [I.C., § 26-3003, as added by 1995, ch. 133, § 1, p. 579.]

**26-3004. Exemption from bank act and prohibitions.** — A college or university offering a debit card program under the provisions of this chapter shall not be considered to be a bank or to be doing banking business as those terms are defined in section 26-106, Idaho Code. Provided however, that a college or university located in this state is prohibited from operating a debit card program which would allow a student or a member of its faculty or staff either to receive cash through a debit card transaction or to receive cash through a customer bank communication terminal or other automated banking facility. [I.C., § 26-3004, as added by 1995, ch. 133, § 1, p. 579.]

**Compiler's notes.** Section 2 of S.L. 1995, ch. 133 declared an emergency. Approved March 15, 1995.

## CHAPTER 31

### RESIDENTIAL MORTGAGE PRACTICES

#### SECTION.

- 26-3101. Short title.
- 26-3102. Definitions.
- 26-3103. Exemptions.
- 26-3104. Unlawful acts.
- 26-3105. Powers and duties of director.
- 26-3106. Remedies available to the department.
- 26-3107. Borrowers' remedies not affected.
- 26-3108. License to do business as a mortgage banker or mortgage broker.

#### SECTION.

- 26-3109. Revocation or suspension of license.
- 26-3110. Surety bonds and trust accounts.
- 26-3111. Records — Annual reports — Renewal of license.
- 26-3112. Examination and investigations.
- 26-3113. Restrictions on fees and charges.
- 26-3114. Prohibited practices.
- 26-3115. Severability.
- 26-3116. Initial licensing and compliance.

**26-3101. Short title.** — This chapter may be known and may be cited as the "Residential Mortgage Practices Act." [I.C., § 26-3101, as added by 1996, ch. 324, § 1, p. 1100.]

**Sec. to sec. ref.** This chapter is referred to in § 28-46-302.

**26-3102. Definitions.** — As used in this chapter:

- (1) "Act" means this Idaho residential mortgage practices act.
- (2) "Borrower" means the person who has applied to a lender for a residential mortgage loan or on whose behalf the activities set forth in subsections (12) and (13) of this section are conducted.
- (3) "Department" means the department of finance of the state of Idaho.
- (4) "Director" means the director of the department of finance.
- (5) "Licensee" means a person licensed pursuant to this chapter to engage in the activities regulated by this act.
- (6) "Mortgage banker" means any person, other than an exempt person, who makes residential mortgage loans to borrowers, and performs the activities described in subsection (12) of this section.
- (7) "Mortgage broker" means any person, other than an exempt person, who performs the activities described in subsection (13) of this section with respect to a residential mortgage loan. For the purposes of this chapter, the term "mortgage broker" does not include persons who are mortgage bankers.
- (8) "Mortgage brokerage agreement" means a written agreement in which a mortgage broker agrees to obtain a residential mortgage loan for the borrower or assist the borrower in obtaining a residential mortgage loan.
- (9) "Person" means an individual, sole proprietorship, partnership, corporation, or other association of individuals, however organized.
- (10) "Residential mortgage loan" means a loan made primarily for personal, family, or household use and primarily secured by a security interest on residential real property located in this state.



(11) "Residential real property" means real property located in this state improved by a one (1) to four (4) family dwelling used as the primary home or residence of one (1) or more persons or located in a platted subdivision.

(12) "Mortgage banking activities" means for compensation or gain, either directly or indirectly, accepting or offering to accept applications for residential mortgage loans, assisting or offering to assist in the preparation of an application for a residential mortgage loan.

(13) "Mortgage brokering activities" means for compensation or gain, either directly or indirectly, accepting or offering to accept an application for a residential mortgage loan, assisting or offering to assist in the preparation of an application for a residential mortgage loan on behalf of a borrower, or negotiating or offering to negotiate the terms or conditions of a residential mortgage loan with any person making residential mortgage loans. [I.C., § 26-3102, as added by 1996, ch. 324, § 1, p. 1100; am. 1997, ch. 367, § 1, p. 1167.]

**Compiler's notes.** The words "this act" refer to S.L. 1996, ch. 324 compiled as §§ 26-3101 — 26-3116 and 26-2502.

**26-3103. Exemptions.** — The provisions of this chapter do not apply to:

(1) Agencies of the United States and agencies of this state and its political subdivisions;

(2) An owner of real property who offers credit secured by a contract of sale, mortgage or deed of trust on the property sold;

(3) A loan that is made by a person to an employee of that person if the proceeds of the loan are used to assist the employee in meeting his housing needs;

(4) Any person licensed or chartered under the laws of this state or the United States as a bank, regulated lender licensed under the Idaho credit code and regularly engaged in making regulated consumer loans other than those secured by a security interest in real property, savings and loan association, credit union, or trust company;

(5) Any person licensed or chartered under the laws of any other state as a bank, savings and loan association, or credit union;

(6) Attorneys, or persons licensed under either chapter 2 or chapter 20, title 54, Idaho Code, provided that the license held by such attorneys or persons is in an active status;

(7) Persons employed by licensees on a full-time basis or persons who are employed by no more than one (1) licensee on a part-time basis;

(8) Any person or entity not making more than five (5) loans primarily for personal, family, or household use and primarily secured by a security interest on residential real property, with his own funds for his own investment, in any period of twelve (12) consecutive months; nor

(9) Any person who funds a residential mortgage loan which has been originated and processed by a licensee or by an exempt person, who does not directly or indirectly solicit borrowers in this state for the purpose of making residential mortgage loans, and who does not participate in the negotiation of residential mortgage loans with the borrower. For the purpose of this

subsection, "negotiation of residential mortgage loans" does not include setting the terms under which a person may buy or fund a residential mortgage loan originated by a licensee or exempt person. [I.C., § 26-3103, as added by 1996, ch. 324, § 1, p. 1100; am. 1997, ch. 367, § 2, p. 1167.]

**Compiler's notes.** Section 3 of S.L. 1997, ch. 367 is compiled as § 26-3105.

**26-3104. Unlawful acts.** — (1) No person, except a person exempt under section 26-3103, Idaho Code, shall engage in mortgage banking activities or mortgage brokering activities without first obtaining a license from the department in accordance with this chapter.

(2) Any person, not exempt under section 26-3103, Idaho Code, who engages in mortgage banking activities or mortgage brokering activities without a license issued pursuant to this chapter, shall be guilty of a felony. [I.C., § 26-3104, as added by 1996, ch. 324, § 1, p. 1100.]

**26-3105. Powers and duties of director.** — In addition to any other duties imposed upon the director by law, the director shall:

(1) Administer and enforce the provisions and requirements of this chapter;

(2) Conduct investigations and issue subpoenas as necessary to determine whether a person has violated any provision of this chapter or rules promulgated under the authority of this chapter;

(3) Conduct examinations of the books and records of licensees and conduct investigations as necessary and proper for the enforcement of the provisions of this chapter and the rules promulgated under the authority of this chapter;

(4) Appoint a volunteer advisory board which shall consist of two (2) individuals who are mortgage bankers and two (2) individuals who are mortgage brokers;

(5) Pursuant to chapter 52, title 67, Idaho Code, issue orders and promulgate rules that, in the opinion of the director, are necessary to execute, enforce and effectuate the purposes of this chapter;

(6) Be authorized to set, by annual written notification to licensees, limits on the fees and charges which are set forth in subsections (1) and (2) of section 26-3113, Idaho Code;

(7) Require that all funds collected by the department under this chapter shall be deposited into the finance administrative account pursuant to section 67-2702, Idaho Code; and

(8) Review and approve forms used by licensees prior to their use as prescribed by the director. [I.C., § 26-3105, as added by 1996, ch. 324, § 1, p. 1100; am. 1997, ch. 367, § 3, p. 1167.]

**Compiler's notes.** Sections 2 and 4 of S.L. 1997, ch. 367 are compiled as §§ 26-3103 and 26-3108, respectively.



**26-3106. Remedies available to the department.** — (1) Whenever it appears to the director that any person has engaged in or is about to engage in any act or practice constituting a violation of any provision of this chapter or any rule or order thereunder, he may in his discretion bring an action in any court of competent jurisdiction, and upon a showing of any violation there shall be granted any or all of the following:

(a) A writ or order restraining or enjoining temporarily or permanently, any act or practice violating any provision of this chapter or any rule promulgated pursuant thereto, and to enforce compliance under this chapter or any rule or order hereunder;

(b) An order that the person violating any provision of this chapter, or a rule or order hereunder pay a civil penalty to the department in an amount not to exceed five thousand dollars (\$5,000) for each violation;

(c) An order allowing the director to recover costs which may include investigative expenses and attorney's fees;

(d) An order granting a declaratory judgment that a particular act, practice or method is a violation of the provisions of this chapter;

(e) An order granting other appropriate remedies including restitution to borrowers for excess charges or actual damages.

(2) If the director finds that a person has violated or is violating, or that there is reasonable cause to believe that a person is about to violate the provisions of this chapter, the director may, in his discretion, order the person to cease and desist from the violations. [I.C., § 26-3106, as added by 1996, ch. 324, § 1, p. 1100.]

**26-3107. Borrowers' remedies not affected.** — The grant of powers to the director in this chapter does not limit remedies available to borrowers under this chapter or under other principles of law or equity. [I.C., § 26-3107, as added by 1996, ch. 324, § 1, p. 1100.]

**26-3108. License to do business as a mortgage banker or mortgage broker.** — (1) The director shall receive and act on all applications for licenses to do business as a mortgage banker or mortgage broker. Applications shall be filed in the manner prescribed by the director, shall contain such information as the director may reasonably require, shall be updated as necessary to keep the information current, and shall be accompanied by an application fee of two hundred dollars (\$200). When an application for licensure is denied or withdrawn, the director shall retain all fees paid by the applicant.

(2) An application for license shall be denied unless the director finds that:

(a) The financial responsibility, character, and fitness of the license applicant, and of the officers and directors thereof, if the applicant is a corporation, are such as to warrant belief that the business will be operated honestly and fairly within the purposes of this chapter;

(b) The individuals in charge of applicant's places of business have a minimum of three (3) years' experience in residential mortgage lending;

(c) The applicant has a net worth of at least ten thousand dollars (\$10,000);

(d) The applicant has not been convicted of a felony or misdemeanor involving moral turpitude, nor has a court accepted a finding of guilt on the part of the applicant, of a felony or a misdemeanor involving moral turpitude; and

(e) The applicant has not had a license, substantially equivalent to a license under this chapter and issued by another state, revoked or suspended under the law of such state.

(3) The director is empowered to conduct investigations as he may deem necessary, to enable him to determine the existence of the requirements set out in subsection (2) of this section.

(4) Upon written request, an applicant is entitled to a hearing on the question of his qualifications for a license if:

(a) The director has notified the applicant in writing that his application has been denied, or objections filed;

(b) The director has not issued a license within sixty (60) days after the application for the license was filed. If a hearing is held, the applicant and those filing objections shall reimburse, pro rata, the director for his reasonable and necessary expenses incurred as a result of the hearing. A request for hearing may not be made more than fifteen (15) days after the director has mailed a writing to the applicant notifying him that the application has been denied and stating in substance the director's finding supporting denial of the application or that objections have been filed and the substance thereof.

(5) The director may, on application, issue additional licenses to the same licensee upon compliance with all the provisions of this chapter governing the issuance of a single license. A separate license shall be required for each place of business from which mortgage brokering activities or mortgage banking activities are directly or indirectly conducted. The individual in charge of each place of business must satisfy the requirements of subsections (2)(b), (d) and (e) of this section. Each license shall remain in full force and effect unless annual renewal fees are not paid or the license is relinquished, suspended, or revoked.

(6) No licensee shall change the location of any place of business, consolidate two (2) or more locations, or close any location, without giving the director at least fifteen (15) days' prior written notice.

(7) A licensee shall not engage in the business of making or brokering residential mortgage loans at any place of business for which he does not hold a license nor shall he engage in business under any other name than that on the license.

(8) The director may suspend action upon a license application pending resolution of any criminal charges before any court of competent jurisdiction against an applicant which would disqualify that applicant if convicted. [I.C., § 26-3108, as added by 1996, ch. 324, § 1, p. 1100; am. 1997, ch. 367, § 4, p. 1167.]



**26-3109. Revocation or suspension of license.** — (1) If the department has reason to believe that grounds exist for revocation or suspension of a license, the department may initiate a contested case against the license of the mortgage banker or mortgage broker in accordance with chapter 52, title 67, Idaho Code. The director may, after proceedings pursuant to chapter 52, title 67, Idaho Code, suspend the license for a period not to exceed six (6) months, or revoke the license, if he finds that:

- (a) The licensee or any employee or agent of the licensee has violated this chapter or any rule or order lawfully made pursuant to this chapter; or
- (b) The licensee or any employee or agent of the licensee has violated any other laws of this state, or federal laws or regulations pertaining to the mortgage banking or mortgage brokering activities set forth in section 26-3102, Idaho Code; or
- (c) Facts or conditions exist which would clearly have justified the director in refusing to grant a license had these facts or conditions been known to exist at the time the license was issued; or
- (d) The licensee or any employee or agent of the licensee has been convicted of a felony or a misdemeanor involving moral turpitude, or a court has accepted a finding of guilt on the part of the licensee or employee or agent of the licensee, of any felony or a misdemeanor involving moral turpitude; or
- (e) The licensee or any employee or agent of the licensee has had a license substantially equivalent to a license under this chapter, and issued by another state, revoked or suspended under the laws of such state; or
- (f) The licensee has filed an application for a license which as of the date the license was issued, or as of the date of an order denying, suspending or revoking a license, was incomplete in any material respect or contained any statement that was, in light of the circumstances under which it was made, false or misleading with respect to any material fact.

(2) If the director finds that probable cause for revocation of a license exists and that enforcement of this chapter and the public interest require immediate suspension of the license pending investigation, he may, after a hearing upon five (5) days' written notice, enter an order suspending the license for not more than thirty (30) days.

(3) Any licensee may relinquish the license by notifying the department in writing of its relinquishment, but this relinquishment shall not affect his liability for acts previously committed.

(4) The director may, in his discretion, reinstate a license, terminate a suspension, or grant a new license to a person whose license has been revoked or suspended if no fact or condition then exists which clearly would justify the department in refusing to grant a license. [I.C., § 26-3109, as added by 1996, ch. 324, § 1, p. 1100; am. 1997, ch. 367, § 5, p. 1167.]

**26-3110. Surety bonds and trust accounts.** — (1) All licensees, with or without an office located in this state, shall maintain a surety bond to the state of Idaho in accordance with this section. The bond to be maintained shall be in the amount of ten thousand dollars (\$10,000). This amount shall

be increased by additional sums of five thousand dollars (\$5,000) for each office, in addition to an initial office, that the licensee maintains within the state of Idaho. In the event that a licensee has violated any of the provisions of this chapter, any other governing state law, any governing federal law, or in the event that a court of competent jurisdiction has found that a licensee has damaged any person, then the bond shall be forfeited and paid by the surety to the state of Idaho for the benefit of any person damaged by the licensee. The bond shall be a continuing obligation of the issuing surety. The surety's liability under the bond for any claims made thereunder either individually or in the aggregate shall in no event exceed the face amount of the bond issued. The bond shall be issued by a surety authorized to do business in the state of Idaho. The bond, including any and all riders and endorsements executed subsequent to the effective date of the bond, shall be placed on file with the department.

(2) Each licensee shall deposit all fees allowed by section 26-3113, Idaho Code, paid to the licensee by borrowers in a trust account established at a bank, savings and loan association, or credit union located in the state of Idaho. Funds held in a trust account may only be withdrawn in accordance with a written agreement with the borrower.

(3) Each licensee shall file with the director, on a form approved by the director, a statement identifying the name of the financial institution, account number, and name of account for the trust account maintained.

(4) Each licensee shall authorize the director or a duly authorized representative of the director, on a form approved by the director, to examine the licensee's trust account at such times as the director may direct. [I.C., § 26-3110, as added by 1996, ch. 324, § 1, p. 1100; am. 1997, ch. 367, § 6, p. 1167.]

### **26-3111. Records — Annual reports — Renewal of license. —**

(1) Every licensee shall maintain records in conformity with generally accepted accounting principles in a manner that will enable the director to determine whether the licensee is complying with the provisions of this chapter. The recordkeeping system of a licensee shall be sufficient if he makes the required information reasonably available. The records need not be kept in the place of business where residential mortgage loans are made, if the director is given free access to the records wherever located. The records pertaining to any loan need not be preserved for more than five (5) years after making the final entry relating to the loan.

(2) On or before August 31 of each year, every licensee shall pay an annual license renewal fee of one hundred dollars (\$100), and file with the director a composite annual report for the residential mortgage loans made or brokered by him. [I.C., § 26-3111, as added by 1996, ch. 324, § 1, p. 1100.]

**26-3112. Examination and investigations. —** (1) The director shall examine periodically at intervals he deems appropriate, the loans and



business records of each licensee. In addition, for the purpose of discovering violations of the provisions of this chapter or securing information lawfully required, the director may at any time investigate the loans, business, books and records of any such licensee. For these purposes, he shall have free and reasonable access to the offices, places of business, books and records of the licensee. The director, for purposes of examination of licensees herein, shall be paid the actual cost of examination by the licensee, within thirty (30) days of the examination.

(2) If a licensee's records are located outside this state, the licensee shall have the option to make them available to the director at a convenient location within this state, or pay the reasonable and necessary expenses for the director or his representative to examine them at the place where they are maintained. The director may designate representatives, including comparable officials of the state in which the records are located, to inspect them on his behalf.

(3) For the purposes of this section, the director may administer oaths or affirmations, and upon his own motion or upon request of any party, may subpoena witnesses, compel their attendance, adduce evidence, and require the production of any matter which is relevant to the investigation, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of relevant facts, or any other matter reasonably calculated to lead to the discovery of admissible evidence.

(4) Upon failure to obey a subpoena or to give testimony and upon reasonable notice to all persons affected thereby the director may apply to the district court for an order compelling compliance. [I.C., § 26-3112, as added by 1996, ch. 324, § 1, p. 1100.]

**26-3113. Restrictions on fees and charges.** — (1) With the exception of a loan cancellation fee, a licensee shall not require a borrower to pay any fees or charges prior to a residential mortgage loan closing, except:

(a) Charges actually incurred by the licensee on behalf of the borrower for services which have been rendered by third parties necessary to process the application. These fees may include, but are not limited to, fees for credit reports, flood insurance certifications, property inspections, title insurance commitments, UCC-4 lien searches, and appraisals;

(b) An application fee;

(c) A rate-lock fee; and

(d) A commitment fee upon approval of the residential mortgage loan.

(2) A loan cancellation fee may be charged and collected by a licensee at any time either prior to the scheduled closing of a residential mortgage loan transaction or subsequent thereto.

(3) Any fees charged under the authority of this section must be reasonable and customary as to the type and the amount of the fee charged. [I.C., § 26-3113, as added by 1996, ch. 324, § 1, p. 1100.]

**26-3114. Prohibited practices.** — No licensee shall:

- (1) Obtain any exclusive dealing or exclusive agency agreement from any borrower;
- (2) Delay closing of any residential mortgage loan for the purpose of increasing interest, costs, fees, or charges payable by the borrower;
- (3) Accept any fees at closing which were not previously disclosed fully to the borrower;
- (4) Obtain any agreement or instrument in which blanks are left to be filled in after execution;
- (5) Engage in any misrepresentation in connection with a residential mortgage loan;
- (6) Make payment, whether directly or indirectly, of any kind to any in-house or fee appraiser for the purpose of influencing the independent judgment of the appraiser with respect to the value of any real estate which is to be covered by a residential mortgage loan;
- (7) Make any false promises likely to influence or persuade, or pursue a course of misrepresentations and false promises through agents, solicitors, advertising or otherwise; nor
- (8) Misrepresent, circumvent or conceal, through whatever subterfuge or device, any of the material particulars or the nature thereof, regarding a transaction to which it is a party.
- (9) Enter into any agreement, with or without the payment of a fee, to fix in advance a particular interest rate or other term in a residential mortgage loan unless the agreement is in writing and is signed by the parties. [I.C., § 26-3114, as added by 1996, ch. 324, § 1, p. 1100.]

**26-3115. Severability.** — The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstances is declared invalid for any reason, such declaration shall not affect the validity of remaining portions of this act. [I.C., § 26-3115, as added by 1996, ch. 324, § 1, p. 1100.]

**Compiler's notes.** For the words "this act," see compiler's note, § 26-3102.

**26-3116. Initial licensing and compliance.** — A person who conducts any of the activities set forth in subsections (12) and (13) of section 26-3102, Idaho Code, on the effective date of this act shall, within sixty (60) days following the effective date of this act, apply to the department for a license. [I.C., § 26-3116, as added by 1996, ch. 324, § 1, p. 1100.]

**Compiler's notes.** Section 2 of S.L. 1996, ch. 324 is compiled as § 26-2502.

For the words "this act," see Compiler's note, § 26-3102.



## CHAPTER 32

## TRUST INSTITUTIONS — GENERAL PROVISIONS

## SECTION.

- 26-3201. Title.  
 26-3202. Purposes of the act.  
 26-3203. Definitions.  
 26-3204. Persons authorized to act as a fiduciary.  
 26-3205. Activities not requiring a charter.

## SECTION.

- 26-3206. Trust business of state trust institution.  
 26-3207. Trust business of out-of-state trust institution.  
 26-3208. Name of trust institution.

**26-3201. Title.** — Chapters 32 through 36, title 26, Idaho Code, shall be known and may be cited as the “Idaho Trust Institutions Act.” [I.C., § 26-3201, as added by 2000, ch. 288, § 8, p. 970.]

**Compiler’s notes.** Sections 7 and 9 of S.L. 2000, ch. 288, are compiled as §§ 26-1808 and 26-3301 through 26-3305.

**Sec. to sec. ref.** This chapter is referred to in §§ 26-101, 26-1111, 26-1401, 26-1808, 26-3201.

**26-3202. Purposes of the act.** — The purposes of this act are to permit:  
 (1) State banks and state trust companies to engage in the trust business in this state; and

(2) Banks and other depository institutions, foreign banks and trust companies to engage in the trust business on a multistate and international basis to the extent consistent with the safety and soundness of the trust institutions engaged in a trust business in this state and the protection of consumers, clients and other customers of such trust institutions. [I.C., § 26-3202, as added by 2000, ch. 288, § 8, p. 970.]

**26-3203. Definitions.** — The following definitions shall be liberally construed to accomplish the purposes of this act. In this act, unless the context otherwise requires:

(1) “Account” means the client relationship established with a trust institution involving the transfer of funds or property to the trust institution, including a relationship in which the trust company acts as trustee, executor, administrator, guardian, custodian, conservator, bailee, receiver, registrar, or agent, but excluding a relationship in which the trust institution acts solely in an advisory capacity.

(2) “Act as a fiduciary” or “acting as a fiduciary” means to:

(a) Accept or execute trusts, including to:

- (i) Act as trustee under a written agreement;
- (ii) Receive money or other property in its capacity as trustee for investment in real or personal property;
- (iii) Act as trustee and perform the fiduciary duties committed or transferred to it by order of a court of competent jurisdiction;
- (iv) Act as trustee of the estate of a deceased person; or
- (v) Act as trustee for a minor or incapacitated person;

(b) Administer in any other fiduciary capacity real or tangible personal property; or

(c) Act pursuant to order of court of competent jurisdiction as executor or administrator of the estate of a deceased person or as a guardian or conservator for a minor or incapacitated person.

(3) "Authorized trust institution" means any state trust company, trust office or representative trust office.

(4) "Bank" has the meaning set forth in 12 U.S.C. 1813(h); provided that the term "bank" shall not include any "foreign bank" as defined in 12 U.S.C. 3101(7), except for any such foreign bank organized under the laws of a territory of the United States, Puerto Rico, Guam, American Samoa or the Virgin Islands, the deposits of which are insured by the federal deposit insurance corporation.

(5) "Bank supervisory agency" means:

(a) Any agency of another state with primary responsibility for chartering and supervising a trust institution; and

(b) The office of the comptroller of the currency, the federal deposit insurance corporation, the board of governors of the federal reserve system, the office of thrift supervision and any successor to these agencies.

(6) "Branch" with respect to a depository institution has the meaning set forth in section 26-106, Idaho Code.

(7) "Charter" means the authority issued by the director or a bank supervisory agency authorizing a trust institution to act as a fiduciary in its home state.

(8) "Client" means a person to whom a trust institution owes a duty or obligation under a trust or other account administered by the trust institution or as an advisor or agent, regardless of whether the trust institution owes a fiduciary duty to the person. The term includes the noncontingent beneficiaries of an account.

(9) "Company" includes a bank, trust company, corporation, limited liability company, partnership, association, business trust or another trust.

(10) "Department" means the Idaho department of finance.

(11) "Depository institution" means any company chartered to act as a fiduciary and included for any purpose within any of the definitions of "insured depository institution" as set forth in 12 U.S.C. 1813(c)(2) and (3).

(12) "Director" means the director of the department of finance.

(13) "Foreign bank" means a foreign bank, as defined in section 1(b)(7) of the international banking act of 1978, chartered to act as a fiduciary in a state other than this state.

(14) "Home state" means:

(a) With respect to a federally chartered trust institution and a foreign bank, the state in which such institution maintains its principal office; and

(b) With respect to any other trust institution, the state which chartered such institution.

(15) "Home state regulator" means the bank supervisory agency with primary responsibility for chartering and supervising an out-of-state trust institution.



(16) “Host state” means a state, other than the home state of a trust institution, or a foreign country in which the trust institution maintains or seeks to acquire or establish an office.

(17) “New trust office” means a trust office located in a host state which:

(a) Is originally established by the trust institution as a trust office; and

(b) Does not become a trust office of the trust institution as a result of:

(i) The acquisition of another trust institution or trust office of another trust institution; or

(ii) A merger, consolidation, or conversion involving any such trust institution or trust office.

(18) “Office” with respect to a trust institution means the principal office, a trust office or a representative trust office, but not a branch.

(19) “Out-of-state bank” means a bank chartered to act as a fiduciary in any state or states other than this state.

(20) “Out-of-state trust company” means either a trust company that is not a state trust company or a savings association whose principal office is not located in this state.

(21) “Out-of-state trust institution” means a trust institution that is not a state trust institution.

(22) “Person” means an individual, a company or any other legal entity.

(23) “Principal office” with respect to:

(a) A state trust company, means a location registered with the director as the state trust company’s home office at which:

(i) The state trust company does business;

(ii) The state trust company keeps its corporate books and a set of its material records, including material fiduciary records; and

(iii) At least one (1) executive officer of the state trust company maintains an office.

(b) A trust institution other than a state trust company, means its principal place of business in the United States.

(24) “Representative trust office” means an office at which a trust institution has been authorized by the director to engage in a trust business other than acting as a fiduciary.

(25) “Savings association” means a depository institution that is neither a bank nor a foreign bank.

(26) “State” means any state of the United States, the District of Columbia, any territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Virgin Islands and the Northern Mariana Islands.

(27) “State bank” means:

(a) A bank which has received a charter from the director authorizing it to operate a trust department; or

(b) A foreign bank as defined in section 1(b)(7) of the international banking act of 1978 chartered to act as a fiduciary in this state.

(28) “State trust company” means a corporation organized under this act and chartered to act as a fiduciary by the state, including a trust company organized under the laws of this state before the effective date of this act.

(29) “State trust institution” means a trust institution having its principal office in this state.

(30) "Trust business" means the holding out by a person to the public by advertising, solicitation or other means that the person is available to perform any service of a fiduciary in this or another state including, but not limited to:

- (a) Acting as a fiduciary; or
- (b) To the extent not acting as a fiduciary, any of the following:
  - (i) Receiving for safekeeping personal property of every description;
  - (ii) Acting as assignee, bailee, conservator, custodian, escrow agent, registrar, receiver or transfer agent; or
  - (iii) Acting as financial advisor, investment advisor or manager, agent or attorney-in-fact in any agreed upon capacity.

(31) "Trust company" means a state trust company or any other company chartered to act as a fiduciary that is neither a depository institution nor a foreign bank.

(32) "Trust institution" means a depository institution, foreign bank, state bank or trust company.

(33) "Trust office" means an office, other than the principal office, at which a trust institution is licensed by the director to act as a fiduciary.

(34) "Unauthorized trust activity" means:

- (a) A person, other than one identified in section 26-3204(1), Idaho Code, acting as a fiduciary within this state;
- (b) A person engaging in a trust business in this state at any office of such person that is not its principal office, if it is a state trust institution, or that is not a trust office or a representative trust office of such person, unless the person has been authorized by the director, in his discretion, to engage in a trust business in this state in another manner and upon such conditions as he may require; or
- (c) An out-of-state trust institution engaging in a trust business in this state at any time an order issued by the director pursuant to section 26-3603(2), Idaho Code, is in effect. [I.C., § 26-3203, as added by 2000, ch. 288, § 8, p. 970.]

**26-3204. Persons authorized to act as a fiduciary.** — (1) No person shall act as a fiduciary in this state except:

- (a) A state trust company;
- (b) A state bank;
- (c) A savings bank organized under the laws of this state and authorized to act as a fiduciary pursuant to the savings bank act, chapter 18, title 26, Idaho Code;
- (d) A national bank authorized by the comptroller of the currency to act as a fiduciary pursuant to 12 U.S.C. 92a;
- (e) A federally chartered savings association having its principal office in this state and authorized by its federal chartering authority to act as a fiduciary;
- (f) An out-of-state bank with a branch in this state established or maintained pursuant to the interstate banking act, chapter 26, title 26, Idaho Code, or the interstate branching act, chapter 16, title 26, Idaho Code, or a trust office licensed by the director pursuant to this act;



(g) An out-of-state trust company with a trust office licensed by the director pursuant to this act;

(h) A foreign bank with a trust office licensed by the director pursuant to this act; or

(i) Such other person as may be authorized by the director, in his discretion, and upon such conditions as he may require.

(2) No person shall engage in an unauthorized trust activity. [I.C., § 26-3204, as added by 2000, ch. 288, § 8, p. 970.]

**Sec. to sec. ref.** This section is referred to in § 26-3203.

**26-3205. Activities not requiring a charter.** — Notwithstanding any other provision of this act, a person does not engage in the trust business or in any other business in a manner requiring a charter under this act, or in an unauthorized trust activity by:

(1) Acting in a manner authorized by law and in the scope of authority as an agent of a trust institution with respect to an activity which is not an unauthorized trust activity;

(2) Obtaining trust business as a result of an existing attorney-client relationship or certified public accountant-client relationship;

(3) Acting as trustee under a deed of trust delivered only as security for the payment of money or for the performance of another act;

(4) Receiving and distributing rents and proceeds of sale as a licensed real estate broker on behalf of a principal in a manner authorized by the Idaho real estate commission;

(5) Engaging in a securities transaction or providing an investment advisory service as a licensed and registered broker-dealer, investment advisor or registered representative thereof, provided the activity is regulated by the Idaho department of finance or the securities and exchange commission;

(6) Engaging in the sale and administration of an insurance product by an insurance company or agent licensed by the Idaho department of insurance to the extent that the activity is regulated by the Idaho department of insurance;

(7) Engaging in the lawful sale of prepaid funeral contracts under a permit issued by the Idaho board of morticians or engaging in the lawful business of a perpetual care cemetery under the Idaho endowment care cemetery act;

(8) Acting as trustee under a voting trust as provided by the Idaho business corporation act;

(9) Acting as trustee by a public, private, or independent institution of higher education or a university system, including its affiliated foundations or corporations, with respect to endowment funds or other funds owned, controlled, provided to or otherwise made available to such institution with respect to its educational or research purposes;

(10) Engaging in other activities expressly excluded from the application of this act, by rule of the director;

(11) Acting as a fiduciary for relatives;

(12) Provided the company is a trust institution and is not barred by order of the director from engaging in a trust business in this state pursuant to section 26-3603(2), Idaho Code:

(a) Marketing or soliciting in this state through the mails, telephone, any electronic means or in person with respect to acting or proposing to act as a fiduciary outside of this state;

(b) Delivering money or other intangible assets and receiving the same from a client or other person in this state; or

(c) Accepting or executing outside of this state a trust of any client or

(13) Acting pursuant to court appointment as:

(a) A personal representative of a decedent's estate; or

(b) A guardian or conservator of an estate. [I.C., § 26-3205, as added by 2000, ch. 288, § 8, p. 970.]

**26-3206. Trust business of state trust institution.** — (1) A state trust institution may act as a fiduciary or otherwise engage in a trust business in this or any other state or foreign country, subject to complying with applicable laws of such state or foreign country, at an office established and maintained pursuant to this act, at a branch or at any location other than an office or branch.

(2) In addition, a state trust institution may conduct any activities at any office outside this state that are permissible for a trust institution chartered by the host state where the office is located, except to the extent such activities are expressly prohibited by the laws of this state or by any regulation or order of the director applicable to the state trust institution; provided however, that the director may waive any such prohibition if the director determines, by order or rule, that the involvement of out-of-state offices of state trust institutions in particular activities would not threaten the safety or soundness of such state trust institutions. [I.C., § 26-3206, as added by 2000, ch. 288, § 8, p. 970.]

**26-3207. Trust business of out-of-state trust institution.** — An out-of-state trust institution which establishes or maintains one (1) or more offices in this state under this act, may conduct any activity at each such office which would be authorized under the laws of this state for a state trust institution to conduct at such an office. [I.C., § 26-3207, as added by 2000, ch. 288, § 8, p. 970.]

**26-3208. Name of trust institution.** — A state trust company or out-of-state trust institution may register any name with the director in connection with establishing a principal office, trust office or representative trust office in this state pursuant to this act, except that the director may determine that a name proposed to be registered is potentially misleading to the public and require the registrant to select a name which is not potentially misleading. [I.C., § 26-3208, as added by 2000, ch. 288, § 8, p. 970.]



## CHAPTER 33

## TRUST INSTITUTIONS — STATE TRUST INSTITUTION OFFICES

## SECTION.

26-3301. Trust business.

26-3302. Branches and offices of state trust institutions.

26-3303. State trust company principal office.

## SECTION.

26-3304. Trust office — Representative trust office.

26-3305. Out-of-state offices.

**26-3301. Trust business.** — A state trust company or a state bank may:

- (1) Perform any act as a fiduciary;
- (2) Engage in any trust business;
- (3) Exercise any incidental power that is reasonably necessary to enable it to fully exercise, according to commonly accepted fiduciary customs and usages, a power conferred in this act. [I.C., § 26-3301, as added by 2000, ch. 288, § 9, p. 970.]

**Compiler's notes.** Sections 8 and 10 of S.L. 2000, ch. 288, are compiled as §§ 26-3201 through 26-3208 and 26-3401 through 26-3407.

**Sec. to sec. ref.** This chapter is referred to in §§ 26-101, 26-1111, 26-1401, 26-1808, 26-3201.

**26-3302. Branches and offices of state trust institutions.** — (1) A state trust institution may act as a fiduciary and engage in a trust business at each trust office as permitted by this act, and at a branch in this state.

(2) A state trust institution may not act as a fiduciary but may otherwise engage in a trust business at a representative trust office as permitted by this act.

(3) Notwithstanding subsections (1) and (2) of this section, a state trust institution may not engage at an out-of-state office in any trust business not permitted for such an office by the host state to trust institutions chartered by such state. [I.C., § 26-3302, as added by 2000, ch. 288, § 9, p. 970.]

**26-3303. State trust company principal office.** — (1) Each state trust company must have and continuously maintain a principal office in this state.

(2) Each executive officer at the principal office is an agent of the state trust company for service of process.

(3) A state trust company may change its principal office to any location within this state by filing a written notice with the director setting forth the name of the state trust company, the street address of its principal office before the change, the street address to which the principal office is to be changed, and a copy of the resolution adopted by the board authorizing the change.

(4) The change of principal office shall take effect on the thirty-first day after the date the director receives the notice pursuant to subsection (3) of this section, unless the director establishes an earlier or later date or unless prior to such day the director notifies the state trust company that it must establish to the satisfaction of the director that the relocation is consistent with the provisions of this act for the establishment of a state trust company

at that location, in which event the change of principal office shall take effect when approved by the director. [I.C., § 26-3303, as added by 2000, ch. 288, § 9, p. 970.]

**26-3304. Trust office — Representative trust office.** — (1) A state trust institution may establish or acquire, and maintain, trust offices or representative trust offices anywhere in this state. A state trust institution desiring to establish or acquire, and maintain, such an office shall file a written notice with the director setting forth the name of the state trust institution, the location of the proposed additional office and whether the additional office will be a trust office or a representative trust office, furnish a copy of the resolution adopted by the board authorizing the additional office and pay the filing fee, if any, prescribed by the director.

(2) The state trust institution may commence business at the additional office on the thirty-first day after the date the director receives the notice, unless the director specifies an earlier or later date.

(3) The thirty (30) day period of review may be extended by the director on a determination that the written notice raises issues that require additional information or additional time for analysis. If the period of review is extended, the state trust institution may establish the additional office only on prior written approval by the director.

(4) The director may deny approval of the additional office if the director finds that the state trust institution lacks sufficient financial resources to undertake the proposed expansion without adversely affecting its safety or soundness or that the proposed office would be contrary to the public interest. [I.C., § 26-3304, as added by 2000, ch. 288, § 9, p. 970.]

**Sec. to sec. ref.** This section is referred to in § 26-3406.

**26-3305. Out-of-state offices.** — (1) A state bank, a state trust company or a savings association chartered under the laws of this state may establish and maintain a new trust office or a representative trust office or acquire and maintain an office in a state other than this state. Such a trust institution desiring to establish or acquire, and maintain, an office in another state under this section shall file a notice with the director on a form prescribed by the director, which shall set forth the name of the trust institution, the location of the proposed office, whether the office will be a trust office or a representative trust office, and whether the laws of the jurisdiction where the office will be located permit the office to be maintained by the trust institution, furnish a copy of the resolution adopted by the board authorizing the out-of-state office, and pay the filing fee, if any, prescribed by the director.

(2) The trust institution may commence business at the additional office on the thirty-first day after the date the director receives the notice, unless the director specifies an earlier or later date.

(3) The thirty (30) day period of review may be extended by the director on a determination that the written notice raises issues that require additional information or additional time for analysis. If the period of review



is extended, the trust institution may establish the additional office only on prior written approval by the director.

(4) The director may deny approval of the additional office if the director finds that the trust institution lacks sufficient financial resources to undertake the proposed expansion without adversely affecting its safety or soundness or that the proposed office would be contrary to the public interest. In acting on the notice, the director shall consider the views of the appropriate bank supervisory agencies. [I.C., § 26-3305, as added by 2000, ch. 288, § 9, p. 970.]

CHAPTER 34

TRUST INSTITUTIONS — OUT-OF-STATE TRUST INSTITUTION OFFICES

SECTION.

- 26-3401. Trust business at a branch or trust office or representative trust office.
- 26-3402. Establishing or acquiring an interstate trust office or representative office.
- 26-3403. Requirement of notice.

SECTION.

- 26-3404. Conditions for approval.
- 26-3405. Registration of representative trust office.
- 26-3406. Additional trust offices.
- 26-3407. Notice of subsequent merger, transfer, or closing.

**26-3401. Trust business at a branch or trust office or representative trust office.** — (1) An out-of-state trust institution may act as a fiduciary in this state or engage in a trust business in this state if it maintains a trust office in this state as permitted by this chapter, or a branch in this state.

(2) An out-of-state trust institution may not act as a fiduciary, but may otherwise engage in a trust business, at a representative trust office as permitted by this chapter. [I.C., § 26-3401, as added by 2000, ch. 288, § 10, p. 970.]

**Compiler's notes.** Sections 9 and 11 of S.L. 2000, ch. 288, are compiled as §§ 26-3301 through 26-3305 and 26-3501 through 26-3510.

**Sec. to sec. ref.** This chapter is referred to in §§ 26-101, 26-1111, 26-1401, 26-1808, 26-3201.

**26-3402. Establishing or acquiring an interstate trust office or representative office.** — (1) An out-of-state trust institution that does not operate a trust office in this state and that meets the requirements of this chapter may establish or acquire, and maintain, a trust office in this state.

(2) An out-of-state trust institution may establish or acquire, and maintain, a representative trust office in this state. [I.C., § 26-3402, as added by 2000, ch. 288, § 10, p. 970.]

**26-3403. Requirement of notice.** — An out-of-state trust institution desiring to establish and maintain a new trust office or acquire and maintain a trust office in this state pursuant to this chapter shall provide, or cause its home state regulator to provide, written notice of the proposed transaction to the director on or after the date on which the out-of-state trust institution applies to the home state regulator for approval to establish

or acquire, and maintain, the trust office. The filing of such notice shall be preceded or accompanied by a copy of the resolution adopted by the board authorizing the additional office and the filing fee, if any, prescribed by the director. [I.C., § 26-3403, as added by 2000, ch. 288, § 10, p. 970.]

**Sec. to sec. ref.** This section is referred to in § 26-3404.

**26-3404. Conditions for approval.** — (1) No trust office of an out-of-state trust institution may be acquired or established in this state under this chapter unless:

(a) The out-of-state trust institution shall have confirmed in writing to the director that for as long as it maintains a trust office in this state, it will comply with all applicable laws of this state;

(b) The out-of-state trust institution shall have provided satisfactory evidence to the director of compliance with:

(i) Any applicable requirements of part 15, chapter 1, title 30, Idaho Code, and

(ii) The applicable requirements of its home state regulator for acquiring or establishing and maintaining such office.

(c) The director, acting within sixty (60) days after receiving notice under section 26-3403, Idaho Code, shall have certified to the home state regulator that the requirements of this chapter have been met and the notice has been approved or, if applicable, that any conditions imposed by the director pursuant to subsection (2) of this section have been satisfied.

(2) The out-of-state trust institution may commence business at the trust office on the sixty-first day after the date the director receives the notice unless the director specifies an earlier or later date, provided, with respect to an out-of-state trust institution that is not a depository institution and for which the director shall have conditioned such approval on the satisfaction by the out-of-state trust institution of any requirement applicable to a state trust company pursuant to this act, such institution shall have satisfied such conditions and provided to the director satisfactory evidence thereof.

(3) The sixty (60) day period of review may be extended by the director on a determination that the written notice raises issues that require additional information or additional time for analysis. If the period of review is extended, the out-of-state trust institution may establish the office only on prior written approval by the director.

(4) The director may deny approval of the office if the director finds that the out-of-state trust institution lacks sufficient financial resources to undertake the proposed expansion without adversely affecting its safety or soundness or that the proposed office is contrary to the public interest. In acting on the notice, the director shall consider the views of the appropriate bank supervisory agencies. [I.C., § 26-3404, as added by 2000, ch. 288, § 10, p. 970.]

**26-3405. Registration of representative trust office.** — (1) An out-of-state trust institution may establish or acquire and maintain a representative trust office in this state. An out-of-state trust institution not



maintaining a trust office in this state and desiring to establish or acquire, and maintain a representative trust office shall file a notice with the director on a form prescribed by the director which shall set forth the name of the out-of-state trust institution and the location of the proposed office and satisfactory evidence that the out-of-state trust institution is a trust institution, furnish a copy of the resolution adopted by the board authorizing the representative trust office, and pay the filing fee, if any, prescribed by the director.

(2) The out-of-state trust institution may commence business at the representative trust office on the thirty-first day after the date the director receives the notice, unless the director specifies an earlier or later date.

(3) The thirty (30) day period of review may be extended by the director on a determination that the written notice raises issues that require additional information or additional time for analysis. If the period of review is extended, the out-of-state trust institution may establish the representative trust office only on prior written approval by the director.

(4) The director may deny approval of the representative trust office if the director finds that the out-of-state trust institution lacks sufficient financial resources to undertake the proposed expansion without adversely affecting its safety or soundness or that the proposed office would be contrary to the public interests. In acting on the notice, the director shall consider the views of the appropriate bank supervisory agencies. [I.C., § 26-3405, as added by 2000, ch. 288, § 10, p. 970.]

**26-3406. Additional trust offices.** — An out-of-state trust institution that maintains a trust office in this state under this chapter may establish or acquire additional trust offices or representative trust offices in this state to the same extent that a state trust institution may establish or acquire additional offices in this state pursuant to the procedures for establishing or acquiring such offices set forth in section 26-3304, Idaho Code. [I.C., § 26-3406, as added by 2000, ch. 288, § 10, p. 970.]

**26-3407. Notice of subsequent merger, transfer, or closing.** — Each out-of-state trust institution that maintains an office in this state pursuant to this act, or the home state regulator of such trust institution, shall give at least thirty (30) days' prior written notice or, in the case of an emergency transaction, such shorter notice as is consistent with applicable state or federal law, to the director of:

(1) Any merger, consolidation, or other transaction that would cause a change of control with respect to such out-of-state trust institution or any bank holding company that controls such trust institution, with the result that an application would be required to be filed pursuant to the federal change in bank control act of 1978, as amended, 12 U.S.C. 1817(j), or the federal bank holding company act of 1956, as amended, 12 U.S.C. 1841 et seq., or any successor statutes thereto;

(2) Any transfer of all or substantially all of the trust accounts or trust assets of the out-of-state trust institution to another person; or

(3) The closing or disposition of any office in this state. [I.C., § 26-3407, as added by 2000, ch. 288, § 10, p. 970.]

## CHAPTER 35

## TRUST INSTITUTIONS — STATE TRUST COMPANY ORGANIZATION — GENERAL PROVISIONS

## SECTION.

- 26-3501. Prerequisite to engaging in trust business.  
 26-3502. Application for charter.  
 26-3503. Application fee.  
 26-3504. Minimum capital.  
 26-3505. Issuance of charter.  
 26-3506. Records — Preservation of records.

## SECTION.

- 26-3507. Disclosure of information.  
 26-3508. Trust funds.  
 26-3509. Loans to directors, officers or employees prohibited — Loans to affiliates or subsidiaries prohibited.  
 26-3510. Closing of trust unduly delayed.

**26-3501. Prerequisite to engaging in trust business.** — (1) A corporation duly organized for the purpose of engaging in the trust business may apply for a charter to operate as a state trust company. A state trust company may perform any act as a fiduciary or engage in any trust business within or without this state.

(2) A bank having the power to engage in the trust business, which is organized under the laws of this state or authorized to do business in this state, and which is chartered under the provisions of the Idaho bank act to engage in banking business in the state of Idaho, may apply for a charter from the director authorizing it to operate a trust department.

(3) To the extent not inconsistent with specific provisions of this chapter, and in the discretion of the director, provisions of the Idaho bank act regarding organization, operation and closing of banks shall apply to applicants for a charter under this chapter and to state trust companies. [I.C., § 26-3501, as added by 2000, ch. 288, § 11, p. 970.]

**Compiler's notes.** Sections 10 and 12 of S.L. 2000, ch. 288, are compiled as §§ 26-3401 through 26-3407 and 26-3601 through 26-3609.

**Sec. to sec. ref.** This chapter is referred to in §§ 26-101, 26-1111, 26-1401, 26-1808, 26-3201.

**26-3502. Application for charter.** — An application for a state trust company or trust department charter shall be in writing and in such form as the director shall prescribe, verified under oath and supported by such information, data and records as the director may require. [I.C., § 26-3502, as added by 2000, ch. 288, § 11, p. 970.]

**26-3503. Application fee.** — A reasonable application fee, as set by the director, shall be paid to the department with respect to each application for a charter under this chapter at the time the application is filed. [I.C., § 26-3503, as added by 2000, ch. 288, § 11, p. 970.]

**26-3504. Minimum capital.** — (1) A charter shall not be issued to a corporation applying for a state trust company charter having a paid-in capital of less than one million five hundred thousand dollars (\$1,500,000).

(2) A charter to operate a trust department shall not be issued to a bank unless the capital of the bank is in an amount of not less than one million five hundred thousand dollars (\$1,500,000), in addition to its statutory



required minimum capital for a bank charter required by section 26-205, Idaho Code.

(3) Subject to subsection (4) of this section, a state trust company or state bank shall at all times maintain capital in at least the amount required under subsections (1) and (2) of this section.

(4) The director may require additional capital for a proposed or existing state trust company or state bank or, on application in the exercise of discretion consistent with protecting safety and soundness, reduce the amount of minimum capital required for a proposed or existing state trust company or state bank. [I.C., § 26-3504, as added by 2000, ch. 288, § 11, p. 970.]

**26-3505. Issuance of charter.** — Upon the filing of an application the director shall make or cause to be made an investigation and examination of the facts concerning the applicant and shall issue a charter if he finds:

(1) The applicant is a corporation having powers and purposes to engage in the trust business, organized under the laws of this state or authorized to do business in this state as a foreign corporation; and

(2) The applicant has complied with all of the applicable provisions of this act; and

(3) The ability and integrity of the persons involved in the management of the applicant's business are such as to demonstrate that it will be operated in a sound and lawful manner; and

(4) The applicant has adequate facilities to engage in trust business. [I.C., § 26-3505, as added by 2000, ch. 288, § 11, p. 970.]

**26-3506. Records — Preservation of records.** — A state trust company or trust department shall keep and use in its business any books, accounts and records which will enable the director to determine whether the trust institution is complying with the provisions of this act and the rules and orders of the director. The director may by rule or order provide which books, accounts and records shall be kept, and the periods of time and the manner in which they shall be preserved. [I.C., § 26-3506, as added by 2000, ch. 288, § 11, p. 970.]

**26-3507. Disclosure of information.** — A state trust company or trust department, its officers and employees, shall not disclose information to any person concerning the existence, condition, management and administration of any trust of which it is the trustee except as such disclosure:

(1) Is specifically authorized by the terms of the trust or upon the direction of the trustor;

(2) Is determined by an officer of the state trust institution to be necessary for the proper administration of such trust;

(3) Is required by a court of competent jurisdiction;

(4) Is made, in the case of an irrevocable trust, to or upon the instructions of any beneficiary thereunder whether or not presently entitled to receive benefits from the trust;

(5) Is made to the director or to any state or federal regulatory or insuring agency lawfully requiring such disclosure;

(6) Is required by title 15, Idaho Code. [I.C., § 26-3507, as added by 2000, ch. 288, § 11, p. 970.]

**26-3508. Trust funds.** — (1) All moneys received by a state trust company as a fiduciary on trust business within this state shall be deposited in a bank, in a specially designated account or accounts, shall not be commingled with any funds of the state trust company and shall remain on deposit until disbursed or invested in accordance with the powers and duties of the state trust company in its capacity as fiduciary.

(2) A bank which is chartered by the director to operate a trust department shall establish and maintain a trust department in which separate books and records for each trust or estate shall be maintained. All property held by the bank as a fiduciary shall be segregated from and unmingled with other property of the bank; provided, cash held by the bank as a fiduciary may be deposited to the credit of the bank as such fiduciary in time or demand deposit accounts with itself, or may be deposited in time or demand deposit accounts with any other bank in this state so long as said bank or banks are insured by the federal deposit insurance corporation. Property held by a bank as a fiduciary may be held in the name of nominees of the bank whether the bank is the sole fiduciary or acting with others, but the bank shall be responsible for the acts of any such nominee. [I.C., § 26-3508, as added by 2000, ch. 288, § 11, p. 970.]

**Sec. to sec. ref.** This section is referred to in § 26-3509.

**26-3509. Loans to directors, officers or employees prohibited — Loans to affiliates or subsidiaries prohibited.** — (1) A state trust company or bank having a trust department shall not make any loan to any director, officer or employee of the trust institution or to any affiliate or subsidiary corporation or to any director, officer or employee of an affiliate or subsidiary corporation from its trust funds. A state trust company or bank having a trust department shall not permit any director, officer, employee, affiliate or subsidiary corporation to become indebted to it in any manner out of its trust funds unless specifically authorized to do so by the terms of the trust.

(2) This section shall not prevent the maintenance by a state trust company of its trust funds in time or demand deposits in an affiliate which is a bank, or a trust department of a bank from maintaining its trust funds in the bank in accordance with section 26-3508, Idaho Code. [I.C., § 26-3509, as added by 2000, ch. 288, § 11, p. 970.]

**26-3510. Closing of trust unduly delayed.** — If, as a result of an examination, the director finds that the closing of any trust by a state trust company has been unreasonably delayed, the director may initiate proceedings in a court of competent jurisdiction to require the state trust institution to perform its duties in closing the trust. [I.C., § 26-3510, as added by 2000, ch. 288, § 11, p. 970.]



## CHAPTER 36

## TRUST INSTITUTIONS — SUPERVISION AND ENFORCEMENT

## SECTION.

- 26-3601. Administration and rules.  
 26-3602. Examinations — Periodic reports —  
     Cooperative agreements —  
     Assessment of fees.  
 26-3603. Administrative orders.  
 26-3604. Notice and opportunity for hearing.  
 26-3605. Subpoena power — Examination  
     under oath.

## SECTION.

- 26-3606. Removal of directors, officers and  
     employees.  
 26-3607. Impairment of capital — Unsafe  
     condition — Receivership.  
 26-3608. Limit of legal action.  
 26-3609. Continued operation.

**26-3601. Administration and rules.** — Every authorized trust institution shall be under the supervision of the director. The director may issue, promulgate, amend and rescind rules or orders necessary or proper to carry out the provisions of this act. All authorized trust institutions doing business under the provisions of this act shall conduct their business in a manner consistent with all laws relating to authorized trust institutions, and all rules or orders that may be promulgated or issued by the director. [I.C., § 26-3601, as added by 2000, ch. 288, § 12, p. 970.]

**Compiler's notes.** Section 11 of S.L. 2000, ch. 288, is compiled as §§ 26-3501 through 26-3510.

**Sec. to sec. ref.** This chapter is referred to in §§ 26-101, 26-1111, 26-1401, 26-1808, 26-3201.

**26-3602. Examinations — Periodic reports — Cooperative agreements — Assessment of fees.** — (1) The director may make such examinations, with or without notice, of any office or branch established or maintained in this state pursuant to this act as the director may deem necessary to determine whether the office is being operated in compliance with the laws of this state and in accordance with safe and sound banking practices. The director may compel the attendance of any person or the production of any books, accounts and records for the purpose of such examination.

(2) The director may require periodic reports regarding any trust institution that has established or maintained an office in this state pursuant to this act. The required reports shall be provided by such trust institution or, if an out-of-state trust institution, may be provided by the home state regulator.

(3) The director may enter into cooperative, coordinating and information-sharing agreements with any other bank supervisory agencies or any organization affiliated with or representing one (1) or more bank supervisory agencies with respect to the periodic examination or other supervision of any office in this state of an out-of-state trust institution, or any office of a state trust institution in any host state, and the director may accept the agency's or organization's report of examination and report of investigation in lieu of conducting an examination or investigation.

(4) The director may enter into joint examinations or joint enforcement actions with other bank supervisory agencies having concurrent jurisdiction over any office established and maintained in this state by an out-of-state

trust institution or any office established and maintained by a state trust institution in any host state; provided, that the director may at any time take such actions independently if the director deems such actions to be necessary or appropriate under this act or to ensure compliance with the laws of this state; but provided further that, in the case of an out-of-state trust institution, the director shall recognize the exclusive authority of the home state regulator over corporate governance matters and the primary responsibility of the home state regulator with respect to safety and soundness matters.

(5) Each trust institution that maintains one (1) or more offices in this state may be assessed and, if assessed, shall pay reasonable supervisory and examination fees as set by the director. Such fees may be shared with other bank supervisory agencies or any organization affiliated with or representing one (1) or more bank supervisory agencies in accordance with agreements between such parties and the director. [I.C., § 26-3602, as added by 2000, ch. 288, § 12, p. 970.]

**26-3603. Administrative orders.** — (1) The director shall have the power to:

(a) Order any authorized trust institution, or subsidiary thereof, or any director, officer, or employee to cease and desist violating any provision of this act or any rule or order issued thereunder;

(b) Order any authorized trust institution, or subsidiary thereof, or any director, officer, or employee to cease and desist from a course of conduct that is unsafe or unsound and which is likely to cause insolvency or dissipation of assets or is likely to jeopardize or otherwise seriously prejudice the interests of the public in their relationship with the authorized trust institution;

(c) Order any person to cease and desist from engaging in an unauthorized trust activity;

(d) Temporarily or permanently prohibit the trust institution or person subject to an order under this section from engaging in the trust business in this state.

(2) The director may determine by order that an out-of-state trust institution engaging in or proposing to engage in a trust business in this state does not meet the requirements for establishing a representative trust office in this state, which order shall be effective on the date of issuance or such other date as the director shall determine.

(3) The director may impose a civil money penalty payable to the general fund of not more than five thousand dollars (\$5,000) for each violation of an order issued under this section committed by a subject of the order.

(4) Failure by an authorized trust institution to comply with an order issued under this section within such reasonable time as the director prescribes is grounds for suspension or revocation of its charter or license issued under this act. [I.C., § 26-3603, as added by 2000, ch. 288, § 12, p. 970.]



**Sec. to sec. ref.** This section is referred to in §§ 26-3203, 26-3205.

**26-3604. Notice and opportunity for hearing.** — Consistent with chapter 52, title 67, Idaho Code, notice and opportunity for hearing shall be provided in connection with any of the foregoing actions. Provided however, in cases involving extraordinary circumstances requiring immediate action, the director may take such action, but shall promptly afford a subsequent hearing upon application to rescind the action taken. The director shall promptly give notice to the home state regulator of each enforcement action taken against an out-of-state trust institution and, to the extent practicable, shall consult and cooperate with the home state regulator in pursuing and resolving said enforcement action. [I.C., § 26-3604, as added by 2000, ch. 288, § 12, p. 970.]

**26-3605. Subpoena power — Examination under oath.** — The director shall have the power to subpoena witnesses, compel their attendance, require the production of evidence, administer oaths, and examine any person under oath in connection with any subject related to a duty imposed or a power vested in the director by this act. [I.C., § 26-3605, as added by 2000, ch. 288, § 12, p. 970.]

**26-3606. Removal of directors, officers and employees.** — The director shall have the power to require the immediate removal from office of any officer, director, or employee of any authorized trust institution, who shall be found to be dishonest, incompetent, or reckless in the management of the affairs of the authorized trust institution, or who persistently violates the laws of this state or the rules, orders and instructions issued by the director. [I.C., § 26-3606, as added by 2000, ch. 288, § 12, p. 970.]

**26-3607. Impairment of capital — Unsafe condition — Receivership.** — If it appears to the director that the capital of a state trust company is either reduced or impaired below one million five hundred thousand dollars (\$1,500,000) or the affairs of the company are in an unsound condition, the director shall order the state trust company to make good any deficit or to remedy the unsafe condition of its affairs within sixty (60) days of the date of such order and may restrict and regulate the operation of the state trust company until the capital is so restored. If the deficiency in capital has not been made good and the unsafe condition remedied within sixty (60) days, the director may apply to the district court, in the county in which the principal office of the state trust company is located, to be appointed receiver for the liquidation or rehabilitation of the state trust company. The expense of such receivership shall be paid out of the assets of the state trust company. [I.C., § 26-3607, as added by 2000, ch. 288, § 12, p. 970.]

**26-3608. Limit of legal action.** — This chapter does not limit any statutory or common law right of a person to bring an action in a court for

any act involved in the transaction of trust business or the right of the state to bring an action against any person for a violation of law based on such act. The director may enforce any of his orders through injunctive proceedings or any other appropriate action brought in the name of this state. [I.C., § 26-3608, as added by 2000, ch. 288, § 12, p. 970.]

**26-3609. Continued operation.** — Any bank chartered to operate a trust department on July 1, 2000, is hereby authorized to continue to operate a trust department after July 1, 2000; provided that such bank must conform its trust department operations with the provisions of this act. [I.C., § 26-3609, as added by 2000, ch. 288, § 12, p. 970.]



## TITLE 27

### CEMETERIES AND CREMATORIIUMS

#### CHAPTER.

1. CEMETERY MAINTENANCE DISTRICT LAW, §§ 27-101 — 27-128.
2. RURAL CEMETERY ASSOCIATIONS, §§ 27-201 — 27-206.
3. CREMATORIIUMS, §§ 27-301 — 27-310.

#### CHAPTER.

4. ENDOWMENT CARE CEMETERY ACT, §§ 27-401 — 27-425.
5. PROTECTION OF GRAVES, §§ 27-501 — 27-504.

### CHAPTER 1

#### CEMETERY MAINTENANCE DISTRICT LAW

#### SECTION.

- 27-101. Purpose and policy of law — Short title.
- 27-102. Creation and organization of district.
- 27-103. Joint county cemetery maintenance districts — Commissioners.
- 27-104. Petition.
- 27-105. Notice of hearing of protest.
- 27-106. Notice of election.
- 27-107. Election — Qualification of electors — Canvass.
- 27-108. Canvass by board of commissioners — Validity of organization.
- 27-109. Cemetery maintenance board — Appointment of commissioners — Oath.
- 27-110. Term of office — Vacancies.
- 27-111. Election of commissioners.
- 27-112. Annexation or exclusion of territory from district — Procedure.
- 27-113. Annexation of territory in adjoining county.
- 27-114. Organization of board — Meetings — Officers — Official bonds.
- 27-115. Cemetery maintenance districts are bodies corporate.

#### SECTION.

- 27-116. Corporate powers.
- 27-117. General powers and duties of board of cemetery maintenance commissioners.
- 27-118. Cemetery maintenance district has legal title to property — Procedure for sale or exchange.
- 27-119. Compensation and expenses of cemetery maintenance board commissioners.
- 27-120. Assessor to furnish assessed valuation — Board to make levy.
- 27-121. Levies by cemetery maintenance board commissioners.
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- 27-123. Duties of treasurer of cemetery maintenance district.
- 27-124. Warrants — Countersigned by secretary.
- 27-125. Adoption of budget — Hearing.
- 27-126. Notice of hearing — Publication — Contents.
- 27-127. Public inspection.
- 27-128. Quorum.

**27-101. Purpose and policy of law — Short title.** — The maintaining, improving and beautifying of cemeteries for the burial of the human dead is hereby declared to be one of the first considerations of a civilized people and a fixed and permanent policy of the state of Idaho, and the same is hereby declared to be a public benefit, use and purpose, and there is hereby imposed upon the cemetery maintenance boards, provided for in this act, the duty of beautifying, improving and maintaining the cemetery or cemeteries within their cemetery maintenance districts. And it is hereby declared and determined that any and all property within any cemetery maintenance district created under the provisions of this act is and shall be benefited ratably with all other property within such district, in proportion to its assessed valuation by the creation of such district and by any and all improvements to the cemetery or cemeteries within such district for the maintenance of which such district was created, and that all property within

any such district shall be assessed equally in proportion to its assessed valuation for the purpose of cemetery improvement and maintenance under the provisions of this act.

This act shall be known as the Cemetery Maintenance District Law of the state of Idaho, and whenever cited, enumerated, referred to or amended, may be designated as the Cemetery Maintenance District Law, adding when necessary, the number of the section. [1927, ch. 197, § 1, p. 264; am. 1929, ch. 268, § 2, p. 621; I.C.A., § 27-101; I.C., § 28-101 (1948 Ed.); am. 1967, ch. 214, § 1, p. 644.]

**Compiler's notes.** The words "this act" refer to S.L. 1927, ch. 197, compiled as §§ 27-101 — 27-124.

Section 1 of S.L. 1929, ch. 268 is compiled as § 27-113.

Section 2 of S.L. 1967, ch. 214 is compiled as § 27-116.

**Cross ref.** Burial plots exempt from execution, § 11-603.

Desecration of graves, penalties, §§ 18-7027, 18-7028.

Protection of graves, §§ 27-501 — 27-504.

#### ANALYSIS

Establishment and maintenance.

Taxation of cemetery property.

#### Establishment and Maintenance.

A cemetery may be established and con-

ducted for profit, and the establishment and maintenance thereof by the public has also been authorized by the legislature. *Sunset Mem. Gardens, Inc. v. Idaho State Tax Comm'n*, 80 Idaho 206, 327 P.2d 766 (1958).

#### Taxation of Cemetery Property.

None of the property of the corporation involved, neither the lots sold for burial purposes nor the unplatted acreage, is exempt from the tax levied and assessed since such corporation was not a public cemetery within the intent and meaning of § 63-105 (now § 63-602F) so as to entitle it to exemption from taxation. *Sunset Mem. Gardens, Inc. v. Idaho State Tax Comm'n*, 80 Idaho 206, 327 P.2d 766 (1958).

**27-102. Creation and organization of district.** — Whenever fifteen (15) or more of the holders of title, or evidence of title, to lands aggregating not less than six thousand (6,000) acres of contiguous territory or consisting of contiguous territory of less extent but having market value for assessment purposes of at least one million dollars (\$1,000,000) at the last preceding county assessment, desire to provide for the organization of the same as a cemetery maintenance district, none of their said lands being included within the boundaries of an already created and organized cemetery maintenance district under the terms of this act, such district may be created and organized as hereinafter provided. [1927, ch. 197, § 2, p. 264; am. 1929, ch. 268, § 3, p. 621; I.C.A., § 27-102; I.C., § 28-101 (1948 Ed.); am. 1980, ch. 350, § 2, p. 887.]

**Compiler's notes.** For words "this act" see Compiler's note, § 27-101.

Section 4 of S.L. 1929, ch. 268 is compiled as § 27-104.

Sections 1 and 3 of S.L. 1980, ch. 350 are

compiled as §§ 21-808 and 27-112, respectively.

**Sec. to sec. ref.** This section is referred to in §§ 27-104 and 27-112.

**27-103. Joint county cemetery maintenance districts — Commissioners.** — When the boundaries of a proposed cemetery maintenance district lie in two (2) or more counties, each county shall act separately in the election and organization of that part of the proposed cemetery maintenance district contained in its county: Provided that the boards of county



commissioners of each county so joining, shall meet together upon the presentation of the petition to their respective bodies, asking for such proposed district, and provide for uniform proceedings in each county. When two (2) counties join in a cemetery maintenance district, the county having the larger population within the district(,) shall appoint two (2) of the three (3) cemetery maintenance commissioners and the county having the smaller population within the district, one (1) commissioner. When three (3) counties join in such district, each county shall appoint one (1) commissioner; when more than three (3) counties join in such district, the three (3) counties having the largest population shall each appoint one (1) commissioner. [I.C.A., § 27-102A, as added by 1945, ch. 200, § 1, p. 325; I.C., § 28-103 (1948 Ed.).]

**Compiler's notes.** The comma in the second sentence was enclosed in parentheses by the compiler as surplusage.

**27-104. Petition.** — A petition shall first be presented to the board of county commissioners and filed with the clerk of the board of commissioners of the county in which the proposed cemetery maintenance district is situated, signed by the number of holders of title, or evidence of title specified in section 27-102, which petition shall plainly and clearly designate the boundaries of the proposed cemetery maintenance district and shall state the name of the proposed district, and shall be accompanied by a map thereof. The petition, together with all maps and other papers filed therewith shall, at all proper hours, be open to public inspection in the office of said clerk of the board of commissioners between the date of their said filing and the date of the election. The petition may be in one (1) paper or in several papers. [1927, ch. 197, § 3, p. 264; am. 1929, ch. 268, § 4, p. 621; I.C.A., § 27-103; I.C., § 28-104 (1948 Ed.).]

**Compiler's notes.** Section 3 of S.L. 1929, ch. 268 is compiled as § 27-102.

**Sec. to sec. ref.** This section is referred to in §§ 27-111, 27-112 and 27-113.

**27-105. Notice of hearing of protest.** — When such petition is presented to the board of county commissioners and filed in the office of the clerk of such board, the said board shall set a time for a hearing upon such petition, which time shall not be less than four (4) nor more than six (6) weeks, from the date of the presentation and filing of such petition. A notice of the time of such hearing shall be published by said board, once each week for three (3) successive weeks previous to the time set for such hearing, in a newspaper published within the county in which said district is situated. Said notice shall state that a cemetery maintenance district is proposed to be organized, giving the proposed boundaries thereof, and that any taxpayer within the proposed boundaries of such proposed district may on the date fixed for such hearing appear and offer any objection to the organization of such district, the proposed boundaries thereof or the including or excluding of any real property therein or therefrom. After hearing and considering any and all objections, if any such be interposed, the county commissioners shall thereupon make an order thereon either denying such petition or granting

the same, with or without modification, and shall accordingly fix the boundaries of such proposed district in any order granting such petition. The boundaries so fixed shall be the boundaries of said district after its organization be completed as provided by this act, and a map showing the boundaries of such proposed district as finally fixed and determined by the board of county commissioners shall be prepared and filed in the office of the clerk of said board. [1927, ch. 197, § 4, p. 264; am. 1929, ch. 268, § 5, p. 621; I.C.A., § 27-104; I.C., § 28-105 (1945 Ed.).]

**Compiler's notes.** For words "this act" see Compiler's notes, § 27-101.

**Sec. to sec. ref.** This section is referred to in § 27-112.

**27-106. Notice of election.** — After the county commissioners have made their order finally fixing and determining the boundaries of the proposed district, the clerk of the board of county commissioners shall cause to be published a notice of an election to be held, subject to the provisions of section 34-106, Idaho Code, in such proposed cemetery maintenance district for the purpose of determining whether or not the same shall be organized under the provisions of this chapter. Such notice shall plainly and clearly designate the boundaries of such proposed cemetery maintenance district as designated in the petition and shall state that a map showing the boundaries of said district is on file in his office.

Such notice shall be published first not less than twelve (12) days prior to the election and a second publication not less than five (5) days prior to such election, in a newspaper published within the county aforesaid. Such notice shall require the electors to cast ballots which shall contain the words "... cemetery maintenance district, yes," or "... cemetery maintenance district, no" or words equivalent thereto. No person shall be entitled to vote at any election held under the provisions of this chapter unless he shall possess all the qualifications required of electors under the general laws of the state, and be a resident of the proposed district for thirty (30) days or more next preceding the election. [1927, ch. 197, § 5, p. 264; I.C.A., § 27-105; I.C., § 28-106 (1948 Ed.); am. 1982, ch. 254, § 4, p. 646; am. 1995, ch. 118, § 15, p. 417.]

**Compiler's notes.** Section 3 of S.L. 1982, ch. 254 is compiled as § 25-2604.

Section 14 of S.L. 1995, ch. 118 is compiled as § 25-2604.

**Cross ref.** Qualifications of electors, Const., Art. 6, § 2; § 34-401 et seq.

**Sec. to sec. ref.** This section is referred to in § 27-112.

**27-107. Election — Qualification of electors — Canvass.** — Such election shall be conducted in accordance with the general laws of the state. The board of county commissioners shall establish as many election precincts within such proposed cemetery maintenance district as may be necessary, and define the boundaries thereof, which said precincts may thereafter be changed by the cemetery maintenance board of such district in case such district be organized. Said board of county commissioners shall also appoint three (3) judges of election for each such election precinct, who shall perform the same duties as judges of election under the general laws of the state; and the result of such election shall be certified, and canvassed



and declared by the board of county commissioners. [1927, ch. 197, § 6, p. 264; I.C.A., § 27-106; I.C., § 28-107 (1948 Ed.); am. 1982, ch. 254, § 5, p. 646; am. 1995, ch. 118, § 16, p. 417.]

**Compiler's notes.** Section 6 of S.L. 1982, ch. 254 is complied as § 31-1406.

Section 17 of S.L. 1995, ch. 118 is compiled as § 27-111.

**Cross ref.** Election laws, see Tit. 34.

**Sec. to sec. ref.** This section is referred to in § 27-112.

**27-108. Canvass by board of commissioners — Validity of organization.** — Immediately after any election for voting upon the organization of a cemetery maintenance district, the judges of said election shall forward the official results of said election to the clerk of said board of commissioners. The said board of commissioners shall meet within ten (10) days after said returns are received and shall proceed to canvass the votes cast at such election, and if, upon canvass, it shall appear that one half ( $\frac{1}{2}$ ) or more of said votes are “\_\_\_\_\_ cemetery maintenance district, no,” then a record of that fact shall be duly entered upon the minutes of said board, and all proceedings in regard to the organization of said district shall be void. If, however, it shall appear upon such canvass, that more than one half ( $\frac{1}{2}$ ) of the votes cast are “\_\_\_\_\_ cemetery maintenance district, yes,” the board shall, by order entered on its minutes, declare such territory duly organized as a cemetery maintenance district under the name designated in the petition. After the election, the validity of the proceedings hereunder shall not be affected by any defect in the petition or in the number or qualifications of the signers thereof, and in no event shall any action be commenced or maintained or defense made affecting the validity of such organization after six (6) months from and after the making and entering of the order provided for in this section. Such board shall cause one (1) copy of such order, duly certified, to be filed for record in the office of the county recorder of the county in which said district is situated and shall transmit to the governor one (1) certified copy thereof.

From and after the date of such filing of said order of the board of county commissioners declaring such territory duly organized as a cemetery maintenance district, the organization of such district shall be complete. [1927, ch. 197, § 7, p. 264; I.C.A., § 27-107; I.C., § 28-108 (1948 Ed.).]

**Sec. to sec. ref.** This section is referred to in § 27-110.

**27-109. Cemetery maintenance board — Appointment of commissioners — Oath.** — There shall be three cemetery maintenance commissioners in each district, who shall constitute the cemetery maintenance board. The first cemetery maintenance commissioners of such cemetery maintenance district shall be appointed by the governor. The certificate of such appointment shall be made in triplicate; one certificate shall be filed in the office of the county recorder of the county; one with the clerk of the board of county commissioners, and one with the assessor and tax collector of the county. Every cemetery maintenance commissioner shall take and subscribe the official oath, which oath shall be filed in the office of the board of

cemetery maintenance commissioners. [1927, ch. 197, § 8, p. 264; I.C.A., § 27-108; I.C., § 28-109 (1948 Ed.).]

**27-110. Term of office — Vacancies.** — At the meeting of the board of county commissioners at which the cemetery maintenance district is declared organized, as provided by section 27-108, said board of county commissioners shall divide the cemetery maintenance district into three (3) subdivisions, as nearly equal in population, area and mileage as practicable, to be known as cemetery maintenance commissioners subdistricts one (1), two (2) and three (3). Not more than one (1) of said commissioners shall be an elector of the same cemetery maintenance subdistrict. The first commissioners appointed by the governor shall serve until the next cemetery maintenance district election, at which their successors shall be elected. Any vacancy occurring in the office of the cemetery maintenance commissioner, other than by the expiration of the term of office, shall be filled by the cemetery maintenance board. [1927, ch. 197, § 9, p. 264; I.C.A., § 27-109; I.C., § 28-110 (1948 Ed.).]

**27-111. Election of commissioners.** — (1) On the first Tuesday following the first Monday in November and every alternate year thereafter, three (3) cemetery maintenance district commissioners shall be elected by the electors of each cemetery district as defined in section 27-104, Idaho Code. The board of cemetery maintenance commissioners shall conduct the election in a manner consistent with statutory provisions of chapter 14, title 34, Idaho Code. Of the commissioners comprising the board at any one (1) time, not more than one (1) shall be an elector of the same cemetery maintenance commissioners subdistrict. A commissioner shall be an elector of the subdistrict which he represents at the time of his declaration of candidacy and during his term of office. A qualified elector of the cemetery maintenance district shall be eligible to vote for each of the cemetery maintenance district commissioners. At the first election following the formation of a cemetery maintenance district, commissioners from cemetery maintenance subdistricts one (1) and two (2) shall be elected for terms of four (4) years, and the commissioner from cemetery maintenance subdistrict three (3) shall be elected for a term of two (2) years; thereafter the term of office of all commissioners shall be four (4) years. All elections held under this law, shall be held in conformity with the general laws of the state, including chapter 14, title 34, Idaho Code.

(2) In any election for cemetery maintenance district commissioners, if, after the expiration of the date for filing a declaration of intent as a write-in candidate for the office of commissioner, it appears that only one (1) qualified candidate has been nominated for each position to be filled, it shall not be necessary to hold an election, and the board of commissioners shall declare such candidate elected as commissioner, and the secretary shall immediately make and deliver to such person a certificate of election signed by him bearing the seal of the district. The procedure set forth in this subsection shall not apply to any other cemetery maintenance district election. [1927, ch. 197, § 10, p. 264; I.C.A., § 27-110; I.C., § 28-111 (1948 Ed.); am. 1967,



ch. 14, § 1, p. 23; am. 1982, ch. 250, § 1, p. 641; am. 1995, ch. 118, § 17, p. 417.]

**Compiler's notes.** Section 16 of S.L. 1995, ch. 118 is compiled as § 27-107.

**Cross ref.** Election laws, see Tit. 34.

**27-112. Annexation or exclusion of territory from district — Procedure.** — After the organization of a cemetery maintenance district, additional territory adjoining such district, and lying within the same county may be added thereto and shall thereupon and thenceforth be included in such district, by the affirmative vote of a majority of the qualified electors of such additional territory voting on the question at an election held therefor, which vote may be taken at an election held as provided in sections 27-106 and 34-106, Idaho Code. But such additional territory shall not be annexed to or be included within the district unless such annexation and inclusion be first approved by the cemetery maintenance board of the existing district by resolution entered on the minutes of such board prior to the election on the question of annexation. The same procedure, with such modifications in the form of petition, notices, ballots, etc., as may be necessary shall be adopted as in this law provided in sections 27-102 and 27-104—27-107, Idaho Code, inclusive: A petition signed by a majority of the owners of lands lying within the boundaries of the area proposed to be annexed such lands lying within the boundaries of any cemetery maintenance district heretofore created requesting the withdrawal and exclusion of lands described in said petition from such district and setting forth that the people residing upon said lands are not served by the cemetery or cemeteries within the boundaries of said district, that said people are served by other cemeteries within the county, and that the exclusion and withdrawal of said lands from said district will not reduce the market value for assessment purposes of the lands remaining in said district below five million dollars (\$5,000,000), may be presented and filed with the board of county commissioners of the county within which said district is located. Upon the presentation and filing of such petition said board of county commissioners shall immediately fix a time and place for a hearing on said petition when and where any elector of said district may appear and be heard in support of or opposition to said petition. Notice of said hearing shall be given by said board by publication in one (1) issue of a newspaper of general circulation in said cemetery district at least ten (10) days prior to the date of said hearing and a copy of said notice shall be served by registered mail or personally on the president and secretary of the cemetery district commissioners. If after a hearing on said petition the board of county commissioners determines that the people residing upon the land sought to be withdrawn from such cemetery district are not served by the cemetery or cemeteries within such district, that said people are served by other cemeteries within the county, and that the exclusion and withdrawal of said lands from said district will not reduce the market value for assessment purposes of the lands remaining therein below five million dollars (\$5,000,000), said commissioners shall make and enter such findings in the minutes of their meeting and make and enter an order authorizing and directing the withdrawal and exclusion of

said lands from said cemetery district. Provided that the land so ordered to be withdrawn and excluded from said cemetery district be either annexed to an adjoining cemetery district which does serve said petitioners, or, if not served by an adjoining cemetery district, that said lands be included in the formation of a new cemetery district which does serve said petitioners.

A copy of such findings and order shall be served upon the president and secretary of the cemetery district commissioners, and county assessor, personally, or by registered mail. If the entry of such findings and order be made prior to the 4th Monday of June the lands annexed shall be excluded and withdrawn from the said cemetery district of which they were formerly a part and shall not be subject to assessment made and levied by said former district for the current fiscal year or subsequent years; provided, however, that such lands shall be subject to assessment made and levied for the current fiscal year and subsequent years by the new cemetery district of which they are made a part. If the entry of such findings and order be made subsequent to the 4th Monday of June the lands annexed shall be subject to assessment made and levied by the cemetery district of which they were formerly a part for the current fiscal year but shall thereafter be subject to assessment made and levied by the new cemetery district of which they are made a part. If said county commissioners do not find such facts they shall make and enter findings as to the facts which may exist and deny such petition. The costs in connection with giving the notices herein required shall be paid by petitioners. [1927, ch. 197, § 11, p. 264; I.C.A., § 27-111; am. 1947, ch. 115, § 1, p. 272; I.C., § 28-112 (1948 Ed.); am. 1957, ch. 51, § 1, p. 87; am. 1959, ch. 69, § 1, p. 147; am. 1963, ch. 337, § 1, p. 965; am. 1980, ch. 350, § 3, p. 887; am. 1995, ch. 118, § 18, p. 417.]

**Compiler's notes.** Section 2 of S.L. 1980, ch. 350 is compiled as § 27-102.

Section 19 of S.L. 1995, ch. 118 is compiled as § 27-121.

Section 2 of S.L. 1959, ch. 69 provided for the repeal of all laws, acts, and parts of laws and acts of the state of Idaho in conflict in whole or in part with the provisions of this act.

Section 3 of S.L. 1959, ch. 69 read: "The provisions of this act are hereby declared

separable and if any section, clause or phrase thereof is hereafter declared unconstitutional the same shall not affect the validity of the remaining portions of this act."

Section 2 of S.L. 1947, ch. 115 declared an emergency. Approved March 6, 1947.

Section 2 of S.L. 1957, ch. 51 declared an emergency. Approved February 19, 1957.

Section 4 of S.L. 1959, ch. 69 declared an emergency. Approved March 7, 1959.

**27-113. Annexation of territory in adjoining county.** — After the organization of a cemetery maintenance district, additional territory adjoining such district and contiguous thereto, and located wholly within an adjoining county, may be added to such district and become a part thereof as hereinafter provided. The proceedings for such annexation shall be the same as the proceedings for the creation and organization of a cemetery maintenance district with the following exceptions and modifications:

a. Such proceeding may be initiated by ten (10) or more of the holders of title or evidence of title to contiguous lands aggregating not less than two thousand (2000) acres, or of less area but having a market value for assessment purposes of at least five hundred thousand dollars (\$500,000).



b. A petition, such as is required by section 27-104, Idaho Code, shall be filed with the board of county commissioners of the county in which is situated the territory proposed to be annexed but shall accurately describe the boundaries of such territory, and also name and describe the cemetery maintenance district to which annexation is sought, and shall be accompanied by a map showing and distinguishing the boundaries of the original district and the boundaries of the territory proposed to be annexed, and showing the location of the intervening county line. Such petition must be accompanied by a certified copy of a resolution of the board of cemetery maintenance commissioners of the original district consenting to such annexation.

c. The notice of hearing on such petition shall state that certain territory therein described is proposed to be annexed to a cemetery maintenance district therein named and that any taxpayer within the boundaries of the territory proposed to be annexed may offer objections thereto at the time and place therein specified. The order entered by the local board of county commissioners on such petition shall, if such petition be granted, fix the boundaries of such annexed territory and direct that a map thereof be prepared under the direction of the clerk of the board, and certified copies of such order and map shall be transmitted to the clerk of the board of county commissioners of the county in which the original cemetery maintenance district is situated.

d. An election shall be held in the territory proposed to be annexed for the purpose of voting upon such annexation and the notice thereof shall accurately describe the boundaries of the territory proposed to be annexed, and shall state the name of the district to which annexation is sought, and that a map showing the boundaries of such district and of the territory proposed to be annexed is on file in the office of the clerk of the local board of county commissioners. Such notice shall prescribe the form of ballot to be cast, which shall contain the words "In favor of annexation to .... Cemetery Maintenance District," and "Against annexation to .... Cemetery Maintenance District," and shall direct that the voter indicate his choice thereon by a cross (X).

e. The territory proposed to be annexed shall constitute one (1) election precinct and there shall be added to the usual elector's oath, in case of challenge, the following words: "And I am a resident within the boundaries of the territory proposed to be annexed to .... Cemetery Maintenance District." The returns of such election shall be canvassed by the board of the county commissioners of the county in which the territory proposed to be annexed is situated, and if it shall appear from such canvass that more than one-half ( $\frac{1}{2}$ ) of said voters are in favor of such annexation, such board shall, by order entered on its minutes, declare such territory a part of the cemetery maintenance district to which annexation is sought, and a certified copy of such order shall be transmitted to the cemetery maintenance board of the original district, and also to the board of the county commissioners of the county in which such original district is situated. A certified copy of such order shall also be filed in the office of the county recorder of the county in which the territory proposed to be annexed is situated. Prior to the next

district election following such annexation the cemetery maintenance board shall divide the district into two (2) subdistricts each of which shall comprise all territory of the district situated within the boundaries of one (1) county, and thereafter the commissioners of such district shall be elected at large; provided, that not more than two (2) members of the cemetery maintenance board shall be residents of the same county; and provided, further, that the commissioner whose term of office first expires after such annexation shall be elected by the voters of the entire district from among the qualified electors of such annexed territory. Certified copies of appointments of secretary and treasurer of the district shall be filed with the clerk of the board of county commissioners and with the tax collector of each county in which any portion of the district is situated and all taxes levied by the district shall be certified to, and extended, collected and remitted by, the proper officers of the county in which is situated the property subject to such levy. [1927, ch. 197, § 11A, as added by 1929, ch. 268, § 1, p. 621; I.C.A., § 27-112; I.C., § 28-113 (1948 Ed.); am. 1980, ch. 350, § 4, p. 887.]

**Compiler's notes.** Section 5 of S.L. 1980, ch. 350 is compiled as § 31-1402.

**27-114. Organization of board — Meetings — Officers — Official bonds.** — Immediately after qualifying, the board of cemetery maintenance commissioners shall meet and organize as a board, and at that time, and whenever thereafter vacancies in the respective offices may occur, they shall elect a president from their number, and shall appoint a secretary and treasurer who may also be from their number, all of whom shall hold office during the pleasure of the board, or for terms fixed by the board. The offices of secretary and treasurer may be filled by the same person. Certified copies of all such appointments, under the hand of each of the commissioners, shall be forthwith filed with the clerk of the board of county commissioners and with the tax collector of the county.

As soon as practicable after the organization of the first board of cemetery maintenance commissioners, and thereafter when deemed expedient or necessary, such board shall designate a day and hour on which regular meetings shall be held and a place for the holding thereof, which shall be within the district. Regular meetings shall be held at least quarterly. The minutes of all meetings must show what bills are submitted, considered, allowed or rejected. The secretary shall make a list of all bills presented, showing to whom payable, for what service or material, when and where used, amount claimed, allowed or disallowed. Such list shall be signed by the chairman and attested by the secretary: provided, that all special meetings must be ordered by the president or a majority of the board, the order must be entered of record, and the secretary must give each member not joining in the order, five (5) days' notice of special meetings: provided, further, that whenever all members of the board are present, however called, the same shall be deemed a legal meeting and any lawful business may be transacted. All meetings of the board must be public, and a majority shall constitute a quorum for the transaction of business. All records shall be open to the inspection of any elector during business hours.



The officers of the district shall take and file with the secretary, an oath for the faithful performance of the duties of the respective offices. The treasurer shall on his appointment execute and file with the secretary an official bond in such an amount as may be fixed by the cemetery maintenance board which amount shall be at least sufficient to cover the probable amounts of money coming into his hands and twenty-five percent (25%) thereof in addition thereto. [1927, ch. 197, § 12, p. 264; I.C.A., § 27-113; I.C., § 28-114 (1948 Ed.).]

**Cited in:** Jones v. State Bd. of Medicine, 97 Idaho 859, 555 P.2d 399 (1976).

**27-115. Cemetery maintenance districts are bodies corporate. —** Every cemetery maintenance district organized as provided by law is a body politic and corporate, and as such has the power specified in this chapter. Its powers can be exercised only by the cemetery board or by agents and officers acting under their authority, or authority of law. The name of the district designated in the order of the board of county commissioners declaring the territory duly organized as a cemetery maintenance district, shall be the corporate name of such district, and it must be known and designated thereby in all actions and proceedings touching its corporate right, property and duties. [1927, ch. 197, § 13, p. 264; I.C.A., § 27-114; I.C., § 28-115 (1948 Ed.).]

**27-116. Corporate powers. —** Each cemetery maintenance district has power:

1. To sue and be sued.
2. To acquire, hold, use, manage, occupy, possess, lease, exchange, sell and convey lands, make such contracts, and acquire, hold, use, manage, occupy, possess, lease, exchange, sell and convey such personal property as may be necessary or convenient for the purposes of this chapter.
3. To levy and apply such taxes for purposes under its exclusive jurisdiction as are authorized by law.
4. To acquire from a city or county, by gift or purchase, a cemetery and endowment, or other, funds pertaining thereto and to hold, use, manage, occupy, possess, lease, exchange, sell, convey, operate, maintain, improve and beautify such cemetery for the burying of the dead. [1927, ch. 197, § 14, p. 264; I.C.A., § 27-115; I.C., § 28-116 (1948 Ed.); am. 1955, ch. 123, § 1, p. 250; am. 1967, ch. 214, § 2, p. 644; am. 1993, ch. 256, § 1, p. 881.]

**Compiler's notes.** Sections 1 and 3 of S.L. 1967, ch. 214 are compiled as §§ 27-101 and 27-118, respectively. Section 2 of S.L. 1993, ch. 256 is compiled as § 31-808.

**27-117. General powers and duties of board of cemetery maintenance commissioners. —** The board of cemetery maintenance commissioners shall have power to manage and conduct the business and affairs of the district, make and execute all necessary contracts, and make and adopt

all necessary rules and regulations for carrying out the purposes of this law. [1927, ch. 197, § 15, p. 264; I.C.A., § 27-116; I.C., § 28-117 (1948 Ed.).]

**27-118. Cemetery maintenance district has legal title to property — Procedure for sale or exchange.** — The legal title to all property acquired under the provisions of this chapter shall immediately and by operation of law, vest in such cemetery maintenance district, and shall be held by such district in trust for, and is hereby dedicated and set apart to the uses and purposes set forth in this chapter. Said board is hereby authorized and empowered to hold, use, acquire, manage, occupy, possess, lease, exchange, sell and convey said property as in this chapter provided; and to institute and maintain any and all actions and proceedings, suits at law or in equity necessary or proper in order to fully carry out the provisions of this chapter, or to enforce, maintain, protect or preserve any and all rights, privileges and immunities created by this chapter or acquired in pursuance thereof. In all courts, actions, suits or proceedings, the said board may sue, appear and defend, in person or by attorneys, and in the name of such cemetery maintenance district.

Real or personal property may be sold, exchanged, conveyed and disposed of by the board of commissioners whenever it finds and by resolution declares that the district no longer has use therefor, subject to the following procedure:

(a) If in the opinion of the board any such property does not exceed \$500 in value, the same may be sold or exchanged without independent appraisal, notice or competitive bids.

(b) All such real property, and any such personal property exceeding \$500 in value, shall be appraised by three (3) disinterested residents of the county in which the district is located, who shall be selected by the board. It may then be sold or exchanged at private or public sale after due notice, to the highest bidder for cash or on terms, at not less than its appraised value.

(c) Due notice of sale or exchange shall be accomplished if the notice shall describe the property to be sold or exchanged (legal description, if real property), state the appraised value thereof (by separate items, if so appraised), and specify the time, place and conditions of sale. Said notice shall be published in a newspaper having general circulation in the district at least twice, the first publication thereof to be not less than 10 days preceding the day of sale.

(d) If such property is sold on terms, the board may contract for the sale of the same for a period not exceeding 10 years, with interest at the legal rate on all deferred payments. The title to all property sold on contract shall be retained in the name of the district until full payment has been made by the purchaser. Any property sold by the board under the provisions of this section, either for cash or on contract, shall be assessed by the county assessor in the same manner and upon the same basis of valuation as though the purchaser held a record title to the property so sold. The board shall have authority to cancel any contract of sale, pursuant to law, if the purchaser shall fail to comply with any of the terms of such contract, and retain all payments paid thereon. The board may by agreement with the



purchaser modify or extend any of the terms of any contracts of sale, but the total term shall not exceed 10 years.

(e) Upon final payment pursuant to the sale or exchange of such property, the president and secretary, pursuant to resolution of the board, shall duly execute and deliver an appropriate deed or bill of sale to the purchaser. [1927, ch. 197, § 16, p. 264; I.C.A., § 27-117; I.C., § 28-118 (1948 Ed.); am. 1967, ch. 214, § 3, p. 644.]

**Compiler's notes.** The words enclosed in parentheses so appeared in the law as enacted.

Section 2 of S.L. 1967, ch. 214 is compiled as § 27-116.

**27-119. Compensation and expenses of cemetery maintenance board commissioners.** — The cemetery maintenance board commissioners may receive compensation of not more than twenty-five dollars (\$25.00) per day for each day spent engaged in meetings or on district business authorized by the board; provided that no commissioner shall receive per diem payments totaling more than one thousand dollars (\$1,000) during any fiscal year of the district for their services as commissioners. Commissioners also shall receive the amount of their actual and necessary expenses incurred in the performance of their official duties. The board shall fix the compensation, if any, to be paid to the commissioners and other officers named in this chapter, and of the agents and employees of the board to be paid out of the treasury of the district. [1927, ch. 197, § 17, p. 264; I.C.A., § 27-118; I.C., § 28-119 (1948 Ed.); am. 1989, ch. 250, § 1, p. 599.]

**27-120. Assessor to furnish assessed valuation — Board to make levy.** — On or before the first Monday in July of each year, the county assessor shall deliver to the secretary of each cemetery maintenance district within the county a statement showing the aggregate valuation of all the taxable property in such district; and thereafter the cemetery board shall levy the taxes herein provided for. [1927, ch. 197, § 18, p. 264; I.C.A., § 27-119; I.C., § 28-120 (1948 Ed.).]

**27-121. Levies by cemetery maintenance board commissioners.** — (1) At the last regular meeting of the cemetery maintenance board prior to the second Monday of September in each year, the cemetery board of each cemetery maintenance district may levy for cemetery purposes a property tax in each cemetery maintenance district of not more than four hundredths of one percent (.04%) of the market value for assessment purposes on all taxable property within the cemetery maintenance district. Upon the levy being made by the cemetery maintenance board under this section, it shall be the duty of the secretary of the district to transmit to the county auditor and county assessor and state board of equalization, certified copies of the resolution providing for such levy as provided in section 63-808, Idaho Code. Said taxes shall be collected as provided in section 63-812, Idaho Code.

(2) An additional property tax of not more than six hundredths of one percent (.06%) of the market value for assessment purposes on all taxable property within the cemetery maintenance district may be levied by the

cemetery board for the sole and express purpose of acquisition of burial ground. The proceeds from such levy may be accumulated by the board for future acquisitions, or pledged to the repayment of indebtedness incurred pursuant to section 27-122, Idaho Code, provided, that the proposal to levy such additional amount of property tax, or portion thereof, shall have been approved by at least two-thirds ( $\frac{2}{3}$ ) of the qualified electors residing in the cemetery maintenance district at a previous election held in accordance with the provisions of section 34-106, Idaho Code. [1927, ch. 197, § 19, p. 264; I.C.A., § 27-120; am. 1943, ch. 27, § 1, p. 55; I.C., § 28-121 (1948 Ed.); am. 1963, ch. 341, § 1, p. 978; am. 1977, ch. 115, § 1, p. 247; am. 1982, ch. 101, § 1, p. 280; am. 1995, ch. 82, § 4, p. 218; am. 1995, ch. 118, § 19, p. 417; am. 1996, ch. 322, § 6, p. 1029.]

**Compiler's notes.** Sections 3 and 5 of S.L. 1995, ch. 82 are compiled as §§ 22-307 and 31-3503, respectively.

Sections 18 and 20 of S.L. 1995, ch. 118 are compiled as §§ 27-112 and 31-206, respectively.

Sections 5 and 7 of S.L. 1996, ch. 322 are compiled as §§ 25-2402 and 31-870, respectively.

Section 2 of S.L. 1963, ch. 341 declared an emergency. Approved March 29, 1963.

**Cross ref.** Cities establishing and improving cemeteries, § 50-320.

Lands assessable in what district, § 27-112.

Power of eminent domain, § 7-701.

Public cemeteries, exemption from taxation, § 63-602F.

**27-122. Indebtedness prohibited — Exception.** — The cemetery maintenance board or other officers of the district, shall have no power to incur any debt or liability whatever, either by issuing bonds or otherwise, in excess of the express provisions of this chapter; and any debt or liability incurred in excess of such provisions shall be and remain absolutely void. However, the board of any district shall have authority to incur indebtedness for the sole purpose of purchasing burial ground, which indebtedness shall not exceed a term of ten (10) years. [1927, ch. 197, § 20, p. 264; I.C.A., § 27-121; I.C., § 28-122 (1948 Ed.); am. 1965, ch. 110, § 1, p. 216; am. 1977, ch. 115, § 2, p. 247.]

**27-123. Duties of treasurer of cemetery maintenance district.** — It is hereby made the duty of the treasurer of the cemetery maintenance district to keep account with such district; to place to the credit of such district all moneys received by him from the collector of taxes or from any other officer charged with the collection of taxes as the proceeds of taxes levied by the cemetery maintenance board, or from any other sources, and of all other moneys belonging to such district and to pay over all moneys belonging to such district on legally drawn warrants or orders of the district officers entitled to draw the same. [1927, ch. 197, § 21, p. 264; I.C.A., § 27-122; I.C., § 28-123 (1948 Ed.).]

**27-124. Warrants — Countersigned by secretary.** — The secretary shall countersign all drafts and warrants on the district treasury, and no payment of the district funds shall be made except on drafts or warrant[s] countersigned by him. He shall not countersign any such draft or warrant until he has found that the payment has been legally authorized; that the money therefor has been duly appropriated and that such appropriation has not been exhausted.



Such warrants shall be drawn by and countersigned upon the order of the president of the cemetery maintenance board, or in his absence, the other members of the board; but no drafts or warrants shall be drawn except upon the appropriation of the board, nor in excess of the moneys actually in the district treasury, except that warrants may be issued in anticipation of the collection of taxes, but not in excess of the amount of the levy therefor, nor shall any warrants be issued, nor indebtedness incurred in anticipation of such levy except as herein provided. When a warrant is presented for payment, if there is money in the treasury for the purpose, the treasurer must pay the same and write on the face thereof, "paid," the date of payment, and sign his name thereto. [1927, ch. 197, § 22, p. 264; I.C.A., § 27-123; I.C., § 28-124 (1948 Ed.).]

**Compiler's notes.** The bracketed letter "s" in the first paragraph of this section was inserted by the compiler.

**27-125. Adoption of budget — Hearing.** — A board shall adopt a budget and any board with a proposed budget in excess of twenty-five hundred dollars (\$2,500) shall cause a public hearing to be held upon such budget prior to certifying a tax levy to the board of county commissioners. [I.C., § 27-125, as added by 1973, ch. 85, § 1, p. 135; am. 1974, ch. 43, § 1, p. 1082.]

**27-126. Notice of hearing — Publication — Contents.** — Notice of the budget hearing meetings shall be posted at least ten (10) full days prior to the date of said meeting in at least one (1) conspicuous place in each cemetery maintenance district to be determined by the board. A copy of such notice shall also be published in a daily or weekly newspaper published within such cemetery maintenance district, in one (1) issue thereof, during such ten (10) day period. The place, hour and day of such hearing shall be specified in said notice, as well as the place where such budget may be examined prior to such hearing. A full and complete copy of such proposed budget shall be published with and as a part of the publication of such notice of hearing. [I.C., § 27-126, as added by 1973, ch. 85, § 2, p. 135.]

**27-127. Public inspection.** — Such budget shall be available for public inspection from and after the date of the posting of notices of hearing as in this act provided, at such place and during such business hours as the board may direct. [I.C., § 27-127, as added by 1973, ch. 85, § 3, p. 135.]

**Compiler's notes.** The words "this act" refer to S.L. 1973, ch. 85 compiled as §§ 27-125 — 27-128.

**27-128. Quorum.** — A quorum of the board shall attend such hearing and explain the proposed budget and hear any and all objections thereto. [I.C., § 27-128, as added by 1973, ch. 85, § 4, p. 135.]

## CHAPTER 2

## RURAL CEMETERY ASSOCIATIONS

## SECTION.

27-201. Organization authorized.

27-202. Application of Idaho nonprofit corporation act.

## SECTION.

27-203, 27-204. [Repealed.]

27-205. Members — Meetings — Quorum.

27-206. Certificate of membership and title.

**27-201. Organization authorized.** — Three (3) or more residents of Idaho may organize a corporate nonprofit rural cemetery association as herein provided. [1933, ch. 181, § 1, p. 335; I.C., § 28-201 (1948 Ed.); am. 1991, ch. 42, § 1, p. 82.]

## ANALYSIS

Conducted for profit.

Taxation.

**Conducted for Profit.**

A cemetery may be established and conducted for profit, and the establishment and maintenance thereof by the public has also been authorized by the legislature. *Sunset Mem. Gardens, Inc. v. Idaho State Tax Comm'n*, 80 Idaho 206, 327 P.2d 766 (1958).

**Taxation.**

None of the property of the corporation involved, neither the lots sold for burial purposes nor the unplatted acreage, is exempt from the tax levied and assessed since such corporation was not a public cemetery within the intent and meaning of § 63-105 (now § 63-602F) so as to entitle it to exemption from taxation. *Sunset Mem. Gardens, Inc. v. Idaho State Tax Comm'n*, 80 Idaho 206, 327 P.2d 766 (1958).

**27-202. Application of Idaho nonprofit corporation act.** — Each corporation created under the provisions of this chapter shall be governed by the provisions of the Idaho nonprofit corporation act, except insofar as they may be inconsistent with this chapter. [I.C., § 27-202, as added by 1991, ch. 42, § 3, p. 82.]

**Compiler's notes.** A former § 27-202, which comprised S.L. 1933, ch. 181, § 2, p. 335; I.C., § 28-202 (1948 Ed.), was repealed by § 2 of S.L. 1991, ch. 42.

The Idaho nonprofit corporation act referred to in this section is compiled as §§ 30-3-1 — 30-3-145.

**27-203, 27-204. Governing board — Officers — Articles of incorporation — Filing fees.** [Repealed.]

**Compiler's notes.** These sections which comprised S.L. 1933, ch. 181, §§ 3 and 4, p.

335; I.C., §§ 28-203 and 28-204 (1948 Ed.), were repealed by § 2 of S.L. 1991, ch. 42.

**27-205. Members — Meetings — Quorum.** — Every person who acquires a lot or lots shall become a member and shall have one (1) vote. Meetings of the members shall be held at least annually at such time and place and upon such notice as may be prescribed by the bylaws. Five (5) or more members shall constitute a quorum to transact all business which the members may lawfully transact. [1933, ch. 181, § 5, p. 335; I.C., § 28-205 (1948 Ed.).]

**27-206. Certificate of membership and title.** — Certificates of membership and certificates of title to the lots sold shall be issued in such form as may be provided by the bylaws or by resolutions of the stockholders or



directors. It shall not be necessary to record certificates of title to lots sold but a duplicate copy of each certificate shall be retained by the corporation. [1933, ch. 181, § 6, p. 335; I.C., § 28-206 (1948 Ed.).]

CHAPTER 3  
CREMATORIUMS

SECTION.	SECTION.
27-301. Definitions of terms.	27-307. Records of crematories.
27-302. Cremation of human remains.	27-308. Revocation and refusal to reissue license.
27-303. Inspection of crematories — Rules.	27-309. Violation declared public nuisance — Enforcement — Penalties.
27-304. Removal of human remains.	27-310. Conflict with existing laws.
27-305. Permits to operate crematories.	
27-306. License or permit fee — Renewal.	

**27-301. Definitions of terms.** — As used in this act the following terms shall have the following meaning [meanings].

- (a) Crematory — Means a building or structure containing one or more retorts for the reduction of bodies of deceased persons to cremated remains.
- (b) Cremation — Means the reduction of the body of a deceased person to cremated remains in a crematory.
- (c) Human remains — Means the body of a deceased person and includes the body in any stage of decomposition and cremated remains.
- (d) Cremated remains — Means human remains after cremation in a crematory.
- (e) Columbarium — Means a structure, room or other space in a building or structure containing niches for permanent inurement [inurnment] of cremated remains in a place used or intended to be used for cemetery purposes. [1957, ch. 191, § 1, p. 378; I.C., § 28-301 (1957 Supp.).]

**Compiler’s notes.** The words “this act” refer to S.L. 1957, ch. 191, compiled as §§ 27-301 — 27-310. The bracketed words “meanings” and “inurnment” were inserted by the compiler.

**27-302. Cremation of human remains.** — The funeral director or mortician having charge of the preparation of a human body for burial and the last rites thereof shall have the right to be present, either in person or by his employees, at any stage of the cremation of such human remains. [1957, ch. 191, § 2, p. 378; I.C., § 28-302 (1957 Supp.); am. 1994, ch. 105, § 1, p. 234.]

**Compiler’s notes.** Section 2 of S.L. 1994, ch. 105 is compiled as § 27-305.

**27-303. Inspection of crematories — Rules.** — It shall be the duty of the Idaho state board of morticians to establish, promulgate and from time to time amend reasonable rules governing the cremation of human remains. Such rules shall provide minimum standards of sanitation, required equipment and fire protection which the state board of health shall deem necessary for the protection of the public. The board of morticians or its agent shall inspect all crematoriums at least once each year and may inspect

as often as the board of morticians shall deem necessary for the enforcement of this act. [1957, ch. 191, § 3, p. 378; I.C., § 28-303 (1957 Supp.); am. 1974, ch. 23, § 3, p. 633; am. 1996, ch. 174, § 1, p. 558.]

**Compiler's notes.** For words "this act" see Compiler's notes, § 27-301.

Section 2 of S.L. 1996, ch. 174, is compiled as § 27-305.

Sections 2 and 4 of S.L. 1974, ch. 23 are compiled as §§ 16-1506 and 27-305, respectively.

**27-304. Removal of human remains.** — Human remains delivered to a crematorium shall not be removed from the casket or other container without the written consent of the person giving the consent to the cremation of the body. [1957, ch. 191, § 4, p. 378; I.C., § 28-304 (1957 Supp.).]

**27-305. Permits to operate crematories.** — Any person, firm, association or corporation desiring a crematory in the state of Idaho shall be a funeral establishment licensed under section 54-1111, Idaho Code, and shall apply for and receive from the board of morticians a permit or license to be issued by and in such form as the board shall prescribe. Applications for permits to operate crematories shall be in writing and shall contain the name of the applicant, the address and the location of the crematory and a description of the type of structure and equipment to be used in the operation of the crematory, and such further information as the board may require. The board or its agent shall examine the premises and structure to be used as a crematory and shall issue the permit only if the applicant and structure meet the standards required by the rules of the state board of morticians and the provisions of this act. [1957, ch. 191, § 5, p. 378; I.C., § 28-305 (1957 Supp.); am. 1974, ch. 23, § 4, p. 633; am. 1994, ch. 105, § 2, p. 234; am. 1996, ch. 174, § 2, p. 558.]

**Compiler's notes.** For words "this act" see Compiler's notes, § 27-301.

Section 1 of S.L. 1996, ch. 174 is compiled as § 27-303.

Sections 1 and 3 of S.L. 1994, ch. 105 are compiled as §§ 27-302 and 27-307, respectively.

**27-306. License or permit fee — Renewal.** — Each applicant for a permit to operate a crematory in the state of Idaho shall pay to the bureau of occupational licenses as agent of the board of morticians at the time of filing the application the sum of one hundred dollars (\$100). All licenses or permits issued under this act shall expire on June 30th of each year and may be renewed by payment of an annual license fee of one hundred dollars (\$100) provided the applicant is not in violation of this act or the rules of the state board of morticians. [1957, ch. 191, § 6, p. 378; I.C., § 28-306 (1957 Supp.); am. 1974, ch. 23, § 5, p. 633; am. 1996, ch. 174, § 3, p. 558.]

**Compiler's notes.** For words "this act" see Compiler's notes, § 27-301.



**27-307. Records of crematories.** — Upon the receipt of a human body for cremation, the crematory shall deliver to the funeral director or his agent who delivers such body to the crematory, a receipt therefor showing the date of delivery, name of the funeral director from whom the body is received and the name of the deceased. Each crematory shall maintain a record of each cremation of human remains disclosing the name of the person cremated, the name of the person authorizing the cremation, the date the body was received, the date the cremation was performed and such other information as the state board of morticians may require. The record of each cremation shall be signed by the owner or operator of the crematorium and by the licensed mortician who supervised the cremation. Such records shall be kept at the crematory for inspection by the board of morticians who may also require copies thereof to be filed with it or the bureau of occupational licenses containing such information as may be necessary for the use of the board. [1957, ch. 191, § 7, p. 378; I.C., § 28-307 (1957 Supp.); am. 1974, ch. 23, § 6, p. 633; am. 1994, ch. 105, § 3, p. 234; am. 1996, ch. 174, § 4, p. 558.]

**Compiler's notes.** Sections 2 and 4 of S.L. 1994, ch. 105 are compiled as §§ 27-305 and 31-2808, respectively.

**27-308. Revocation and refusal to reissue license.** — The board of morticians may refuse to grant, or renew the license provided for in this act to a person otherwise qualified who fails to meet or comply with the provisions of this act or the rules adopted by the board of morticians pursuant to the provisions of this act. [1957, ch. 191, § 8, p. 378; I.C., § 28-308 (1957 Supp.); am. 1974, ch. 23, § 7, p. 633; am. 1996, ch. 174, § 5, p. 558.]

**Compiler's notes.** For words "this act" see Compiler's notes, § 27-301.

**27-309. Violation declared public nuisance — Enforcement — Penalties.** — Maintenance or operation of a building or structure within the state of Idaho as a crematorium in violation of the provisions of this act or the rules of the board of morticians adopted pursuant thereto is hereby declared to be a public nuisance and may be abated as such as provided by law. Any person who violates any of the provisions of this act shall be guilty of a misdemeanor and upon conviction thereof shall be fined not exceeding one hundred dollars (\$100) or be imprisoned in the county jail for a period not exceeding thirty (30) days, or both by such fine and imprisonment. It shall be the duty of the bureau of occupational licenses as agent of the board of morticians that the provisions of this act are properly administered and enforced throughout the state and all peace officers and prosecuting attorneys shall aid in their several capacities in the discharge of these duties. [1957, ch. 191, § 9, p. 378; I.C., § 28-309 (1957 Supp.); am. 1974, ch. 23, § 8, p. 633; am. 1996, ch. 174, § 6, p. 558.]

**Compiler's notes.** For words "this act" see Compiler's notes, § 27-301.

Section 9 of S.L. 1974, ch. 23 is compiled as § 31-4405.

Section 7 of S.L. 1996, ch. 174 is compiled as § 54-1106.  
Section 182 of S.L. 1974, ch. 23 provided the

act should be effective on and after July 1, 1974.

**27-310. Conflict with existing laws.** — This act shall be construed and interpreted together with the existing laws regulating the disposal of dead bodies and human remains and shall not repeal such prior laws. [1957, ch. 191, § 10, p. 378; I.C., § 28-310 (1957 Supp.).]

**Compiler's notes.** For words "this act" see Compiler's notes, § 27-301.  
Section 11 of S.L. 1957, ch. 191 read: "The provisions of this act are hereby declared to be

separable and if any section, clause or phrase thereof is hereafter declared unconstitutional, the case shall not affect the validity of the remaining portions of this act."

## CHAPTER 4

### ENDOWMENT CARE CEMETERY ACT

#### SECTION.

- 27-401. Declaration of policy.
- 27-402. Short title.
- 27-403. Definitions.
- 27-404. Corporate form required hereafter for perpetual or endowed care cemetery.
- 27-405. Articles of incorporation — Trust fund.
- 27-406. Duty of owner of cemetery in existence at date of act.
- 27-407. Trust fund required before sale of lots.
- 27-408. Instrument in writing.
- 27-409. Existing cemeteries — Application of law.
- 27-410. Funds deemed for charitable purpose

#### SECTION.

- Tax exempt — Future interests.
- 27-411. Annual registration statement with administrator.
- 27-412. Suits to enforce statute.
- 27-413 — 27-415. [Repealed.]
- 27-416. Rules and regulations.
- 27-417 — 27-419. [Repealed.]
- 27-420. Cemetery examination fees.
- 27-421. Contributions.
- 27-422. Exemption from taxation.
- 27-423. Violations — Misdemeanors.
- 27-423A. Injunctive power.
- 27-424. Act inapplicable to certain cemeteries.
- 27-425. [Repealed.]

**27-401. Declaration of policy.** — It is hereby declared to be in the public interest that cemeteries, as hereinafter in this act defined, advertising and/or selling "endowment care" or "perpetual care" cemetery lots, burial spaces, or interment facilities of any type or kind, be subject to regulation by the state of Idaho in order to insure the sound business practices essential to the continued furnishing of the endowment or perpetual care guaranteed. The provisions of this act shall be liberally construed to carry out this purpose. [1963, ch. 179, § 1, p. 527; I.C., § 28-401 (1963 Supp.).]

**Compiler's notes.** The words "this act" refer to S.L. 1963, ch. 179 which is compiled

as §§ 27-401 — 27-412, 27-416, 27-420 — 27-424.

**27-402. Short title.** — This act may be cited as the "Endowment Care Cemetery Act of 1963." [1963, ch. 179, § 2, p. 527; I.C., § 28-402 (1963 Supp.).]

**Compiler's notes.** For words "this act" see Compiler's notes, § 27-401.



**27-403. Definitions.** — When used herein, unless the context or subject matter requires otherwise, the terms hereinafter set forth shall have the following respective meanings:

(a) Cemetery. The term “cemetery” shall mean a place dedicated to, used and intended to be used for the permanent interment of the human dead, and shall include a burial plot for earth interments, a mausoleum for vault or crypt interments, a crematory, or a crematory and columbarium for cinerary interments, or any combination of one or more of the above.

(b) Endowed or Perpetual Care. The terms “endowed care” or “perpetual care” mean the maintenance and care of all places where interments have been made, of the trees, shrubs, roads, streets and other improvements contained within and/or forming a part of the cemetery. The term shall not include the maintenance or repair of monuments, tombs, copings or other man-made ornaments as associated with individual burial spaces.

(c) Perpetual or Endowed Care Cemetery. The term “perpetual or endowed care cemetery” means a cemetery wherein lots or other burial spaces are sold or transferred under the representation that said cemetery will receive perpetual or endowed care as herein defined, free of further cost to the purchaser after payment of the original purchase price for said lot or burial space.

(d) Trustee. The term “trustee” means the financial institution, or the board of directors of a cemetery authority designated as trustee of the cemetery care fund.

(e) Cemetery Authority. The term “cemetery authority” means any person, firm, corporation, trustee, partnership, association or joint venture, including any family, religious, or fraternal cemetery owning, operating, controlling or managing the cemetery or holding lands for burial purposes.

(f) Burial Space. The term “burial space” means a space in the ground in a burial park for the interment of the remains of a deceased person, and/or a crypt or vault in a mausoleum for the uncremated remains of a deceased person, and/or a niche in a columbarium, other structure or in the ground for the interment of the cremated remains of a deceased person.

(g) Administrator. The term “administrator” means the director of the department of finance. [1963, ch. 179, § 3, p. 527; I.C., § 28-403 (1963 Supp.); am. 1972, ch. 84, § 1, p. 168; am. 1978, ch. 163, § 1, p. 352.]

**Compiler’s notes.** Section 2 of S.L. 1978, ch. 163 is compiled as § 27-408.

**27-404. Corporate form required hereafter for perpetual or endowed care cemetery.** — From and after the effective date of this act it shall be unlawful to operate a perpetual or endowed care cemetery in this state except by means of a corporation organized under the laws of this state; provided, however, that this section shall not apply to any person, firm, corporation or association which, prior to the effective date of this act, was engaged in the business of operating a cemetery or cemeteries and had sold or contracted to sell burial space with a provision for perpetual or endowed care, if such person, firm or corporation has otherwise complied

with the provisions of this act. [1963, ch. 179, § 4, p. 527; I.C., § 28-404 (1963 Supp.); am. 1967, ch. 233, § 1, p. 687.]

**Compiler's notes.** For words "this act" see Compiler's notes, § 27-401.

**27-405. Articles of incorporation — Trust fund.** — After the effective date of this act, no charter shall be issued to a corporation organized for the purpose of maintaining and operating a perpetual or endowed care cemetery unless the articles of incorporation thereof certify to the establishment of an endowment or perpetual care trust fund for such care in accordance with the further provisions of this act, and that there is attached to said articles of incorporation the written instrument establishing said trust fund accompanied by the receipt of the trustee therein designated for the minimum care fund hereinafter provided. [1963, ch. 179, § 5, p. 527; I.C., § 28-405 (1963 Supp.).]

**Compiler's notes.** For words "this act" see Compiler's notes, § 27-401.

**27-406. Duty of owner of cemetery in existence at date of act.** — After the effective date of this act no owner of a cemetery in existence at the effective date of this act, who, previous to such date, has not sold or contracted to sell lots in said cemetery with a provision for perpetual or endowed care, shall thereafter advertise or otherwise hold out to the public that said cemetery or any individual lot therein is entitled to perpetual or endowed care unless and until said owner shall have established a trust fund for the care of said cemetery as provided by this act. [1963, ch. 179, § 6, p. 527; I.C., § 28-406 (1963 Supp.).]

**Compiler's notes.** For words "this act" see Compiler's notes, § 27-401.

**27-407. Trust fund required before sale of lots.** — After the effective date of this act, no corporation hereafter organized for the operation of a perpetual or endowed care cemetery nor any owner of a cemetery not previously operating as a perpetual or endowed care cemetery shall advertise or sell lots in said cemetery under the representation that said cemetery or individual space therein is entitled to perpetual or endowed care until there shall have been established a trust fund to provide for such care in accordance with the following requirements:

(a) That the cemetery authority deposit in an irrevocable trust fund with a trustee, as hereinafter qualified, the sum of fifty thousand dollars (\$50,000) in cash.

(b) That from the final proceeds of any sale made by the cemetery authority of an adult ground burial space there be deposited in said trust fund a sum equal to ten percent (10%) of the selling price of each space, or the sum of ten dollars (\$10.00), whichever is greater; the deposit for an infant burial space shall be ten percent (10%) of the selling price received therefor.



(c) That there be deposited in said trust fund, from the final proceeds of any sale, the sum of five dollars (\$5.00) for each niche sold.

(d) That there be deposited in said trust fund, from the final proceeds of any sale, the sum of twenty-five dollars (\$25.00) for each crypt sold.

(e) All moneys herein required to be paid said trust fund shall be deposited therein not later than thirty (30) days from receipt of the final payment by the purchaser of the burial space.

(f) That the income from the trust or endowment care fund shall be used solely for the general care, maintenance, and embellishment of the cemetery and shall be applied in such manner as the cemetery authority may from time to time determine be for the best interests of the cemetery. [1963, ch. 179, § 7, p. 527; I.C., § 28-407 (1963 Supp.); am. 1973, ch. 199, § 1, p. 450.]

**Compiler's notes.** For words "this act" see Compiler's notes, § 27-401.

**Sec. to sec. ref.** This section is referred to in § 27-412.

**27-408. Instrument in writing.** — The trust fund so created shall be evidenced by an instrument in writing, and shall contain in addition to the requirements of section 27-407, Idaho Code, the following provisions:

(a) That there shall be designated a trustee under this act, which shall be any federally insured financial institution located within the state of Idaho, duly authorized to transact a trust business, or the board of directors of the cemetery authority. When the trust fund is in the care of such board of directors as a board of trustees, the secretary of the cemetery authority shall act as its secretary and keep a true record of all of its proceedings.

(b) Where the trust is vested in such board of directors as a board of trustees, each of said trustees shall file with the administrator a surety bond in the amount of five thousand dollars (\$5,000), conditioned upon his full and faithful performance of his trust obligations.

(c) As compensation, the trustee, whether it be a financial institution acting in such capacity or the board of directors of a cemetery authority acting as the trustee, shall be entitled to compensation in an amount not exceeding twenty-five dollars (\$25.00) quarterly, or a sum equal to one-half of one percent ( $\frac{1}{2}\%$ ) per annum of the principal of the trust fund, whichever is the greater.

(d) In connection with its investment of the trust fund, the trustee shall be governed by the terms of the Uniform Prudent Investor Act, chapter 5, title 68, Idaho Code, as presently enacted or as may be from time to time amended.

(e) The principal of the trust fund shall remain permanently intact and only the income therefrom shall be expended. The income shall be used exclusively for the care of those portions of the cemetery in which lots have been sold with the provision for perpetual or endowed care. It is the intent of this section that the income of said fund shall be used solely for the care of lots or other burial spaces sold to third persons with the provision for perpetual or endowed care, and the care and embellishment of such other portions of the cemetery as may be desirable to preserve the beauty and dignity of the lots sold.

(f) The initial endowment care fund established for any cemetery shall remain in an irrevocable trust fund until such time as this fund has reached the sum of one hundred thousand dollars (\$100,000), when it may be withdrawn at the rate of two thousand dollars (\$2,000) from the original fifty thousand dollars (\$50,000) for each additional six thousand dollars (\$6,000) added to the fund, this to continue until the entire original fifty thousand dollars (\$50,000) has been withdrawn by the cemetery authority. [1963, ch. 179, § 8, p. 527; I.C., § 28-408 (1963 Supp.); am. 1972, ch. 84, § 2, p. 168; am. 1973, ch. 199, § 2, p. 450; am. 1978, ch. 163, § 2, p. 352; am. 1997, ch. 14, § 3, p. 14.]

**Compiler's notes.** For words "this act" see Compiler's notes, § 27-401.

Sections 1 and 3 of S.L. 1978, ch. 163 are compiled as §§ 27-403 and 27-411, respectively.

Sections 2 and 4 of S.L. 1997, ch. 14 are compiled as §§ 68-514 and 50-1013A, respectively.

**Sec. to sec. ref.** This section is referred to in § 27-412.

**27-409. Existing cemeteries — Application of law.** — Any cemetery authority in existence prior to the effective date of this act, which has in fact sold burial spaces under the representation that perpetual care shall be afforded to such lot, shall not be required to make the initial deposit of fifty thousand dollars (\$50,000) in said irrevocable trust fund, but said cemetery authority, in order to comply with the provisions hereof, must meet each and every other requirement henceforth as are prescribed and set forth and required by the provisions of this statute. [1963, ch. 179, § 9, p. 527; I.C., § 28-409 (1963 Supp.); am. 1973, ch. 199, § 3, p. 450.]

**Compiler's notes.** For words "this act" see Compiler's notes, § 27-401.

Section 4 of S.L. 1973, ch. 199 declared an emergency. Approved March 17, 1973.

**27-410. Funds deemed for charitable purpose — Tax exempt — Future interests.** — The endowed care funds authorized herein and all sums paid therein or contributed thereto are, and each thereof are, hereby expressly permitted and shall be deemed to be for charitable purposes. Such endowed care shall be deemed to be provisioned for the discharge of the duty due from the person or persons contributing thereto to the persons interred and to be interred in the cemetery, and likewise a provision for the benefit and protection of the public by preserving and keeping cemeteries from becoming places of disrepair, reproach and desolation in the communities in which they are situated. The trust funds authorized herein, the income therefrom, and the moneys received under any contract providing for care of a burial space, and deposited in the trust fund shall be exempt from taxation. No payment, gift, grant, bequest or other contribution for such general endowed care shall be deemed to be invalid by reason of any indefiniteness or uncertainty of the persons designated as beneficiaries in the instruments creating such trust, nor shall said fund or any contribution thereto be deemed to be invalid as violating any law against perpetuities or the suspension of the power of alienation of title to property. [1963, ch. 179, § 10, p. 527; I.C., § 28-410 (1963 Supp.).]



**27-411. Annual registration statement with administrator.** — Every cemetery authority owning, operating, controlling or managing an endowed care cemetery shall register with the administrator, by filing an annual registration statement on forms furnished by said administrator, which shall show, as of the end of the preceding calendar year or fiscal year, whichever is more convenient to the cemetery authority, the following:

(a) The amount of the principal of the care funds held by the trustee of said funds of such cemetery authority, at the beginning of such year, and in addition thereto all moneys or property received during such year, from the following sources:

- (1) Under and by virtue of the sale of a lot, grave, crypt or niche.
- (2) Under and by virtue of any gift, grant, devise, bequest, payment or other contribution made subsequent to the effective date [March 19, 1963] of the Endowed Care Cemetery Act of 1963.

(b) The income received from such care funds during the preceding calendar or fiscal year as the case may be. Where any of the care funds of a cemetery authority are held by a trustee, other than the board of directors of the cemetery authority, the annual registration statement filed by any cemetery authority shall also contain a certificate signed by the trustee of the care funds of such cemetery authority certifying to the truthfulness of the statements in the report as to:

- (1) The total amount of principal of the care funds held by the trustee.
- (2) The securities in which such care funds are invested and the cash on hand as of the day of the report; and
- (3) The income received from such care funds during the preceding calendar year or fiscal year as the case may be.

Such statement shall be filed by the cemetery authority on or before December 31 of each calendar year with the director administrator. If the fiscal year of such cemetery authority is other than on a calendar year basis, then such statement shall be filed within thirty (30) days of the end of its fiscal year. A filing fee in an amount to be fixed by the administrator but not to exceed the sum of one hundred fifty dollars (\$150) shall be payable at the time of the filing of the annual statement. All reports shall be prepared by an independent certified public accountant licensed in the state of Idaho. [1963, ch. 179, § 11, p. 527; I.C., § 28-411 (1963 Supp.); am. 1974, ch. 24, § 30, p. 744; am. 1978, ch. 163, § 3, p. 352.]

**Compiler's notes.** Section 29 of S.L. 1974, ch. 24, is compiled as § 26-2246 and § 31 has been repealed. Section 2 of S.L. 1978, ch. 163 is compiled as § 27-408.

**27-412. Suits to enforce statute.** — (1) Should the cemetery authority fail to remit to the trustee or trustees in accordance with the law, the funds herein provided for endowment care, or fail to expend all such funds and reasonable care for and maintain any portion of a cemetery entitled to endowment care, or should the trustee or trustees fail to perform the trust obligations in accordance with the law, any three (3) separate lot owners whose lots or other burial spaces are entitled to endowment care, or the next of kin, heirs at law or personal representatives of such lot owners, shall have

the right, or the prosecuting attorney of any county where such lots are situated, shall have the power, by suit for injunction or for appointment of a receiver, to sue for, to take charge of, and to expend such net income for the purposes set out in sections 27-407 and 27-408, Idaho Code. Such suit may be filed in the district court of the county in which said cemetery is located.

(2) Whenever it appears to the administrator that any cemetery authority or trustee has engaged or is about to engage in any act or practice constituting a violation of any provisions of this act or any rule or order hereunder or when an endowment care cemetery fails after thirty (30) days' notice of delinquency to make any report to the administrator required by section 27-411, Idaho Code, the administrator shall give notice of the foregoing to the trustee or trustees of the cemetery endowment care fund, the cemetery authority and the attorney general of Idaho. It shall be the duty of the attorney general within ninety (90) days after the receipt of such notice to institute suit in the district court of any county of this state in which such cemetery is located, for an injunction against further sales of graves, plots, crypts, niches, burial vaults, markers or other cemetery merchandise by such cemetery or for the appointment of a receiver to take charge of the cemetery or trust fund, unless he shall prior to that time be notified by the administrator that such failure to conform to the requirements of the law or to report has been corrected. [I.C., § 27-412, as added by 1978, ch. 163, § 4, p. 352.]

**Compiler's notes.** Former § 27-412, which comprised S.L. 1963, ch. 179, § 12, p. 527; I.C., § 28-412 was repealed by S.L. 1974, ch. 24, § 1.

The words "this act" refer to S.L. 1963, ch.

179, as amended, compiled as §§ 27-401 — 27-424.

Section 5 of S.L. 1978, ch. 163 is compiled as § 27-416.

## **27-413 — 27-415. Enforcement of act — Examination of endowment funds. [Repealed.]**

**Compiler's notes.** These sections which comprised S.L. 1963, ch. 179, §§ 13-15, p. 527; I.C., §§ 28-413 — 28-415 (1963 Supp.);

am. 1971, ch. 263, § 1, p. 1061; am. 1974, ch. 24, §§ 31-33, p. 744 were repealed by S.L. 1978, ch. 163, § 7.

**27-416. Rules and regulations.** — The administrator may establish, adopt and promulgate necessary rules and regulations for the administration and enforcement of this chapter, and the laws subject to his jurisdiction, and prescribe the form of statements and reports provided for in this chapter. [1963, ch. 179, § 16, p. 527; I.C., § 28-416 (1963 Supp.); am. 1974, ch. 24, § 34, p. 744; am. 1978, ch. 163, § 5, p. 352.]

**Compiler's notes.** Sections 4 and 6 of S.L. 1978, ch. 163 are compiled as §§ 27-412 and 27-420, respectively.



**27-417 — 27-419. Certificates of authority — Regulatory charges — Revocation or suspension. [Repealed.]**

**Compiler's notes.** These sections which comprised S.L. 1963, ch. 179, §§ 17-19, p. 527; I.C., §§ 28-417 — 28-419 (1963 Supp.); am. 1972, ch. 84, § 3, p. 168; am. 1974, ch. 24, §§ 35-37, p. 744 were repealed by S.L. 1978, ch. 163, § 7.

**27-420. Cemetery examination fees.** — All regulatory fees or other moneys to be paid under this chapter, unless provision be made otherwise, shall be paid at least once a month to the state treasurer to be credited to the finance administrative account in the state dedicated fund. [1963, ch. 179, § 20, p. 527; I.C., § 28-420 (1963 Supp.); am. 1971, ch. 263, § 2, p. 1061; am. 1978, ch. 163, § 6, p. 352; am. 1984, ch. 47, § 12, p. 76.]

**Compiler's notes.** Section 5 of S.L. 1978, ch. 163 is compiled as § 27-416. Section 7 of S.L. 1978, ch. 163 repealed §§ 27-413 — 27-415, 27-417 — 27-419, and 27-425. Sections 11 and 13 of S.L. 1984, ch. 47 are compiled as §§ 26-2240 and 28-46-203.

**27-421. Contributions.** — A cemetery authority which has established an endowment care fund may take and hold, as part of or incident to the fund, any property, real, personal or mixed, bequeathed, devised, granted, given or otherwise contributed to it for its endowment care fund. [1963, ch. 179, § 21, p. 527; I.C., § 28-421 (1963 Supp.).]

**27-422. Exemption from taxation.** — A perpetual or endowed care cemetery shall be exempt from any and all property taxes on any burial space or spaces, as herein defined, sold by it for the purpose of interment. The cemetery authority shall report annually in writing to the assessor of the county in which the cemetery is located, such burial spaces sold during said year, and the same shall be removed from the tax rolls, effective from and after the year in which the space was sold. [1963, ch. 179, § 22, p. 527; I.C., § 28-422 (1963 Supp.).]

**27-423. Violations — Misdemeanors.** — Violations of this act shall constitute a misdemeanor and each violation shall constitute a separate offense. Any cemetery authority, person, firm or corporation violating any of the provisions of this act shall, upon conviction, be punishable by a fine of not less than \$100 nor more than \$300, or if a person, by a fine or by imprisonment in the county jail not exceeding six (6) months, or by both such fine and imprisonment. [1963, ch. 179, § 23, p. 527; I.C., § 28-423 (1963 Supp.).]

**Compiler's notes.** For words "this act" see Compiler's notes, § 27-401.

**27-423A. Injunctive power.** — The attorney general of the state of Idaho is authorized to institute appropriate legal proceedings to enjoin violations of this act. [I.C., § 27-423A, as added by 1971, ch. 263, § 3, p. 1061.]

**Compiler's notes.** For words "this act" see  
Compiler's note, § 27-401.

Section 4 of S.L. 1971, ch. 263 declared an  
emergency. Approved March 25, 1971.

**27-424. Act inapplicable to certain cemeteries.** — The provisions of this act shall not apply to any municipal cemetery district, state or federal cemetery. [1963, ch. 179, § 24, p. 527; I.C., § 28-424 (1963 Supp.); am. 1972, ch. 84, § 4, p. 168.]

**Compiler's notes.** For words "this act" see  
compiler's notes, § 27-401.

Section 25 of S.L. 1963, ch. 179 read: "If any  
part or parts of this act is, for any reason, held  
to be unconstitutional, such decision shall not  
affect the validity of the remaining portions of

this act. The legislature hereby declares that  
it would have passed the remaining parts of  
this act irrespective of the fact that any part  
or parts hereof be declared unconstitutional."

Section 26 of S.L. 1963, ch. 179 declared an  
emergency. Approved March 19, 1963.

**27-425. Powers of director. [Repealed.]**

**Compiler's notes.** This section which com-  
prised I.C., § 27-425, as added by S.L. 1972,

ch. 84, § 5, p. 168; am. 1974, ch. 24, § 38, p.  
744 was repealed by S.L. 1978, ch. 163, § 7.

CHAPTER 5

PROTECTION OF GRAVES

SECTION.  
27-501. Definitions.  
27-502. Prohibited acts.  
27-503. Permitted acts — Notice.

SECTION.  
27-504. Civil action — Time for commencing  
actions — Venue — Damages  
— Attorney fees.

**27-501. Definitions.** — For the purposes of sections 27-501 through 27-504, Idaho Code:

- (1) "Cairn" means a heap of stones or other material piled up as a memorial or monument to the dead.
- (2) "Grave" means an excavation for burial of a human body.
- (3) "Indian tribe" means any Idaho Indian tribe recognized by the Secretary of the Interior.
- (4) "Professional archaeologist" means a person who has extensive formal training and experience in systematic, scientific archaeology. [I.C., § 27-501, as added by 1984, ch. 73, § 4, p. 135.]

**Compiler's notes.** Section 3 of S.L. 1984,  
ch. 73 is compiled as § 18-7028.

**Cross ref.** Desecration of graves, penalties,  
§§ 18-7027, 18-7028.

**27-502. Prohibited acts.** — (1) Except as provided in section 27-503, Idaho Code, no person shall wilfully remove, mutilate, deface, injure or destroy any cairn or grave. Persons disturbing graves through inadvertence, including by construction, mining, or logging, shall cause the human remains to be reinterred. The expense for such reinterment shall be at least partially borne by the state historical society.

- (2) No person shall:
  - (a) Possess any artifacts or human remains taken from a cairn or grave on or after January 1, 1984, in a manner other than that authorized under section 27-503, Idaho Code.



(b) Publicly display or exhibit any human remains.

(c) Sell any human artifacts or human remains taken from a cairn or grave.

(3) The provisions of this section do not apply to:

(a) The possession or sale of artifacts discovered in or taken from locations other than cairns or graves or artifacts that were removed from cairns or graves by other than human action; or

(b) Actions taken in the performance of official law enforcement duties. [I.C., § 27-502, as added by 1984, ch. 73, § 4, p. 135.]

**Sec. to sec. ref.** This section is referred to in § 27-504.

**27-503. Permitted acts — Notice.** — (1) If action is necessary to protect the burial site from foreseeable [foreseeable] destruction and upon prior notification to the director of the state historical society and to the appropriate Indian tribe in the vicinity of the intended action if the cairn or grave contains remains of an Indian, a professional archaeologist may excavate a cairn or grave and remove material objects and human remains for subsequent reinterment following scientific study. Reinterment shall be under the supervision of the appropriate Indian tribe if the cairn or grave contained remains of an Indian.

(2) Except as provided in subsection (1) of this section, any proposed excavation by a professional archaeologist of a native Indian cairn or grave shall be initiated only after prior written notification to the director of the state historical society and with prior written consent of the appropriate Indian tribe in the vicinity of the intended action. Failure of a tribe to respond to a request for permission within sixty (60) days of its mailing by certified mail, return receipt requested, shall be deemed consent. All material objects and human remains removed during such an excavation shall, following scientific study, be reinterred at the archaeologist's expense under the supervision of the Indian tribe.

(3) In order to determine the appropriate Indian tribe under this section and section 27-502, Idaho Code, a professional archaeologist or other person shall consult with the director of the state historical society who shall designate the appropriate tribe. [I.C., § 27-503, as added by 1984, ch. 73, § 4, p. 135.]

**Compiler's notes.** The bracketed word "foreseeable" in the first sentence of subsection (1) of this section was inserted by the compiler.

**27-504. Civil action — Time for commencing actions — Venue — Damages — Attorney fees.** — (1) Apart from any criminal prosecution, any person shall have a cause of action to secure an injunction, damages or other appropriate relief against any person who is alleged to have violated the provisions of section 27-502, Idaho Code. The action shall be brought within two (2) years of the discovery of the violation by the plaintiff. The action may be filed in the district court of the county in which the subject

grave or cairn, remains or artifacts are located, or within which the defendant resides.

(2) If the plaintiff prevails in an action brought pursuant to this section:

(a) The court may award reasonable attorney fees to the plaintiff;

(b) The court may grant injunctive or such other relief as is appropriate, including forfeiture of any artifacts or remains acquired or equipment used in the violation. The court shall order the disposition of any items forfeited as it sees fit, including the reinterment of any human remains in accordance with subsection (1) of section 27-502, Idaho Code;

(c) The plaintiff may recover actual damages. Actual damages include special and general damages, which include damages for emotional distress;

(d) The plaintiff may recover punitive damages upon proof that the violation was wilful. Punitive damages may be recovered without proof of actual damages.

(e) An award of punitive damages may be made only once for a particular violation by a particular person, but shall not preclude the award of such damages based on violations by other persons or on other violations.

(3) If the defendant prevails, the court may award reasonable attorney fees to the defendant. [I.C., § 27-504, as added by 1984, ch. 73, § 4, p. 135.]

**Compiler's notes.** Section 5 of S.L. 1984, ch. 73 declared an emergency. Approved March 22, 1984.



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